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14 October 2015

Mona Miyasato
County Executive Officer
Santa Barbara County
105 E. Anapamu St.
Santa Barbara, CA 93101

Re: Ad Hoc Committee discussion issues

Dear Ms. Miyasato;

After attending the County's ad hoc committee to discuss intergovernmental relations, agreements and any and all development plans of the Santa Ynez Band of Mission Indians (now calling themselves Chumash descendants) there were some matters of immediate concern.

1. The meeting opened up with supervisor Farr indicating the County of Santa Barbara has always acknowledged this band as a "sovereign Indian Nation." This is neither legal or appropriate under 25 U.S.C. Sec. 71, a copy of which is enclosed. The best and most accurate description of any Indian tribe is a domestic dependent community or tribe of Indians that has the right to self government and certain immunity from taxes, certain laws and lawsuits.
2. The recitals at the outset of the existing "Cooperative Agreement" are replete with important factual errors and misrepresentations. In particular matters described as "background" are false and inaccurate.

The itinerant Indian descendants at Santa Ynez acquired no rights to land from the Mexican occupation of California. [See Robinson v. Jewell, 9th Circ. 22 June 2015 ___ F.3d ____.] The Smiley Commission report, which formed the basis for the Mission Indian Relief Act of 1891 as amended in 1892 found that the Indians at

RETURN INSTRUCTIONS:

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ROUTE TO:

COUNTY ADMINISTRATOR

Santa Ynez were **NOT** in need of a Presidential “set aside”¹ of land because they had been more than adequately provided for by the Catholic church. One parcel of land (the upper reservation housing area was deeded to the United States in trust in 1903 pursuant to an agreement made in 1901. The 75 acre parcel where the current hotel casino is located was the subject of a quiet title action which included what is now the Camp 4 land. The judgment agreed to by the United States, was entered in that case in 1906 quieting title to all that land with title exclusively in the church. The many individually named Defendants in that case (there was no tribe or tribal government) were allowed, by the settlement agreement, to occupy and use that 75 acre parcel subject to a number of conditions and restrictions made to run with the land with reversionary rights in the church. That parcel is not an Indian reservation nor was it ever brought into trust as required by 25 U.S.C. 465 even after the Catholic church made a Quitclaim Deed to the United States in 1938 conveying that parcel to the United States by gift which was subject to all existing covenants, terms, conditions and restrictions.

3. The next thing to be noted is the proposed “cooperative agreement” is subject to 25 U.S.C. Sec. 81, a copy is enclosed. In particular are the provisions the tribe has included to evade payment of monies due the County by the limitations set out in paragraph 11a, where the tribe seeks to severely restrict recovery of monies that would be due the County, to the net, net income from the casino revenues as opposed to all of the tribe’s properties and assets. Casino revenue is already limited by 25 U.S.C. 2710 (a copy is enclosed). In addition that gross revenue is first subject to overhead expenses including payments due on large bond obligations of the tribe. In effect the County is at the end of the line for casino revenues that become adjusted gross revenues and are then paid over to the tribe by the casino operation and subject to other prior obligations such as profit distributions to tribal members (per capital payments) and other prior earmarked expense allocations.²

It is also subject to obligations to individual tribal member who receive substantial “per capital payments.” In essence, once everyone else is paid, whatever money is left would be available to pay obligations to the County. This is compounded by the fact the tribe claims “sovereign immunity” allows them to operate with no

¹ The 1864 Act of Congress created only 4 Indian reservations in California, one of which was called the Mission reservation. Court decisions [Donnelly v. United States [1913] 228 U.S. 243, Matz v. Arnett [1973] 412 U.S. 481, determined that entitled the President to authorize by decree or special order, land “set asides” for landless Indians. In 1871 Congress prohibited any further creations of treaty reservations. Relying upon the Smiley Commission some 26 land set asides were made by various Presidents. The Santa Ynez community had no land set aside under this process because of the Smiley Commission conclusion there was no need to do so.

² The income from a tribe’s gaming operation is severely limited by law under the Indian Gaming and Regulatory Act [25 U.S.C. 2710]. (copy enclosed)

disclosure, no record inspection or auditing. As a result, whatever monies that are available to pay obligations to the County are dependent upon the voluntary disclosure by the tribal government and casino operations who cannot be made to disclose what these gross revenues, adjusted gross revenues and net revenues actually are.

It is important to note that an agreement such as this made in connection with a fee to trust transfer is not necessarily governed by the rules and provisions of the Indian Gaming and Regulatory Act [25 U.S.C. 2701 et.seq.] or the National Indian Gaming Commission unless gaming activity can be conducted.

All of the problems I previously identified in a lengthy analysis of this “cooperative agreement” were furnished to the County, each member of the Board of Supervisors, and County counsel nearly two years ago. Besides all those matters, both legal issues and economic deficiencies, the provisions of 25 U.S.C. 81 (enclosed) must also be applied even through the B.I.A. may arbitrarily conclude it does not apply.

It is extremely important to be aware that Indian tribes often enter into agreements and later, to evade their provisions, assert their own illegality as a grounds to evade their performance. Without going into too much detail here, a common example is to purport to waive sovereign immunity and then later assert that that waiver is invalid for a whole host of reasons, for example it was not concurred in by the tribal council, or could not be waived without amending or changing the tribe’s constitution, etc.

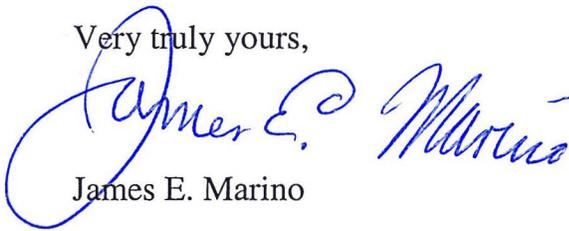
It would be instructive and a good idea for the County to review cases like Marshal Bank v. Nooksack Indian Tribe. In that case the tribe breached the agreement with the bank that lent them millions for casino construction and when the tribe was sued, they sought to have the case dismissed on the grounds their waiver of immunity was invalid. They also asserted their contract with the bank was unenforceable because it wasn’t approved by the Secretary of Interior among other defenses. You should note that the so-called cooperative agreement makes no provision for compliance with this requirement under 25 U.S.C. 81, [copy attached] such an omission builds in a legal escape (or poison pill) if the Chumash were to succeed in getting the County to agree to this “contract” and the land were to go into trust.³

³ It is no coincidence that the tribe seeks the County’s support to facilitate and support transfers of fee land into trust. That is because once the land is transferred into trust it will not be taken out of trust if the tribe reneges and violates any terms of the cooperative agreement even if found to be in breach by a judgment after litigation. The court has no power to restore lands from trust back to fee. Only an Act of Congress could return Indian trust land back to taxable fee lands.

Also any limitation on uses for land to be placed into trust even if agreed to in a contract in advance will not be enforced by the federal government and cannot be enforced in court once the land is in trust. In other words a blatant breach of the agreement in which the County supported a transfer into trust, will not be a basis to remove the land from trust. Once in trust only an Act of Congress can remove it from trust.

Lastly, I had heard that some consideration has been given to having the tribal chairman or a tribal official "chair" the ad hoc County committee. If true I don't believe that a County ad hoc committee [established by the County Board of Supervisors] can be "chaired" by anyone other than the Supervisor's and personnel lawfully appointed to chair that committee, and to do otherwise would likely be illegal. I believe to do otherwise is also inappropriate. Particularly because any outsider, who has not taken the requisite Constitutional oath nor submitted the requisite form 700 disclosure statement and who has not been elected or appointed to public office can be allowed to conduct official County business, or chair such an official committee.

Very truly yours,



James E. Marino

cc: Santa Barbara County Board of Supervisors

25 United States Code Sec. 71

Copy of the Indian Appropriations Act of 1871 prohibiting the acknowledgment of any Indian tribe or “nation” within the United States as being acknowledged or recognized as an independent sovereign nation, tribe or power with whom the United States may contract by treaty.

SUBCHAPTER I—TREATIES

§71. Future treaties with Indian tribes

No Indian nation or tribe within the territory of the United States shall be acknowledged or recognized as an independent nation, tribe, or power with whom the United States may contract by treaty; but no obligation of any treaty lawfully made and ratified with any such Indian nation or tribe prior to March 3, 1871, shall be hereby invalidated or impaired. Such treaties, and any Executive orders and Acts of Congress under which the rights of any Indian tribe to fish are secured, shall be construed to prohibit (in addition to any other prohibition) the imposition under any law of a State or political subdivision thereof of any tax on any income derived from the exercise of rights to fish secured by such treaty, Executive order, or Act of Congress if section 7873 of title 26 does not permit a like Federal tax to be imposed on such income.

(R.S. §2079; Pub. L. 100-647, title III, §3042, Nov. 10, 1988, 102 Stat. 3641.)

CODIFICATION

R.S. §2079 derived from act Mar. 3, 1871, ch. 120, §1, 16 Stat. 566.

Copy of 25 U.S.C. Section 81

This is required for all contracts made with an Indian tribe unless the Secretary of Interior (arbitrarily) decides it does not apply. This is another means a tribe can attack or evade a contract they have signed and agreed to previously.

(R.S. §2080.)

CODIFICATION

R.S. §2080 derived from act July 5, 1862, ch. 135, §1, 12 Stat. 528.

SUBCHAPTER II—CONTRACTS WITH INDIANS

§81. Contracts and agreements with Indian tribes

(a) Definitions

In this section:

(1) The term "Indian lands" means lands the title to which is held by the United States in trust for an Indian tribe or lands the title to which is held by an Indian tribe subject to a restriction by the United States against alienation.

(2) The term "Indian tribe" has the meaning given that term in section 450b(e) of this title.

(3) The term "Secretary" means the Secretary of the Interior.

(b) Approval

No agreement or contract with an Indian tribe that encumbers Indian lands for a period of 7 or more years shall be valid unless that agreement or contract bears the approval of the Secretary of the Interior or a designee of the Secretary.

(c) Exception

Subsection (b) of this section shall not apply to any agreement or contract that the Secretary (or a designee of the Secretary) determines is not covered under that subsection.

(d) Unapproved agreements

The Secretary (or a designee of the Secretary) shall refuse to approve an agreement or contract that is covered under subsection (b) of this section if the Secretary (or a designee of the Secretary) determines that the agreement or contract—

(1) violates Federal law; or

(2) does not include a provision that—

(A) provides for remedies in the case of a breach of the agreement or contract;

(B) references a tribal code, ordinance, or ruling of a court of competent jurisdiction that discloses the right of the Indian tribe to assert sovereign immunity as a defense in an action brought against the Indian tribe; or

(C) includes an express waiver of the right of the Indian tribe to assert sovereign immunity as a defense in an action brought against the Indian tribe (including a waiver that limits the nature of relief that may be provided or the jurisdiction of a court with respect to such an action).

(e) Regulations

Not later than 180 days after March 14, 2000, the Secretary shall issue regulations for identifying types of agreements or contracts that are not covered under subsection (b) of this section.

(f) Construction

Nothing in this section shall be construed to—

(1) require the Secretary to approve a contract for legal services by an attorney;

(2) amend or repeal the authority of the National Indian Gaming Commission under the

Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.); or

(3) alter or amend any ordinance, resolution, or charter of an Indian tribe that requires approval by the Secretary of any action by that Indian tribe.

(R.S. §2103; Pub. L. 85-770, Aug. 27, 1958, 72 Stat. 927; Pub. L. 106-179, §2, Mar. 14, 2000, 114 Stat. 46.)

REFERENCES IN TEXT

The Indian Gaming Regulatory Act, referred to in subsec. (f)(2), is Pub. L. 100-497, Oct. 17, 1988, 102 Stat. 2467, as amended, which is classified principally to chapter 29 (§2701 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

CODIFICATION

R.S. §2103 derived from acts Mar. 3, 1871, ch. 120, §3, 16 Stat. 570; May 21, 1872, ch. 177, §§1, 2, 17 Stat. 136.

AMENDMENTS

2000—Pub. L. 106-179 amended section generally, substituting present provisions for provisions which required agreements with Indian tribes or Indians to be in writing, to bear the approval of the Secretary, to contain the names of all parties in interest, to state the time and place of making, purpose, and contingencies, and to have a fixed time limit to run, and provisions which declared agreements made in violation of this section to be null and void and which authorized recovery of amounts in excess of approved amounts, with one half of recovered amounts to be paid into the Treasury.

1958—Par. Second, Pub. L. 85-770 struck out requirement that contracts with Indian tribes be executed before a judge of a court of record.

Par. Sixth, Pub. L. 85-770 struck out par. Sixth enumerating contractual elements to be certified to by the judge.

TRANSFER OF FUNCTIONS

For transfer of functions of other officers, employees, and agencies of Department of the Interior, with certain exceptions, to Secretary of the Interior, with power to delegate, see Reorg. Plan No. 3 of 1950, §§1, 2, eff. May 24, 1950, 15 F.R. 3174, 64 Stat. 1262, set out in the Appendix to Title 5, Government Organization and Employees.

§81a. Counsel for prosecution of claims against the United States; cancellation; revival

Any contracts or agreements approved prior to June 26, 1936, by the Secretary of the Interior between the authorities of any tribe, band, or group of Indians and their attorneys for the prosecution of claims against the United States, which provide that such contracts or agreements shall run for a period of years therein specified, and as long thereafter as may be required to complete the business therein provided for, or words of like import, or which provide that compensation for services rendered shall be on a quantum-meruit basis not to exceed a specified percentage, shall be deemed a sufficient compliance with section 81 of this title: *Provided, however,* That nothing herein contained shall limit the power of the Secretary of the Interior, after due notice and hearing and for proper cause shown, to cancel any such contract or agreement: *Provided further,* That the provisions of this section and section 81b of this title shall not be construed to revive any contract which

25 UNITED STATES CODE

SECTION 2710

Subsection (b) (2) --- (B) permissible uses for
Indian Gaming revenues items (i through v)

(highlighted with yellow highlighting)

(d) Federal agency personnel

Upon the request of the Chairman, the head of any Federal agency is authorized to detail any of the personnel of such agency to the Commission to assist the Commission in carrying out its duties under this chapter, unless otherwise prohibited by law.

(e) Administrative support services

The Secretary or Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

(Pub. L. 100-497, § 8, Oct. 17, 1988, 102 Stat. 2471.)

REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

§ 2708. Commission; access to information

The Commission may secure from any department or agency of the United States information necessary to enable it to carry out this chapter. Upon the request of the Chairman, the head of such department or agency shall furnish such information to the Commission, unless otherwise prohibited by law.

(Pub. L. 100-497, § 9, Oct. 17, 1988, 102 Stat. 2472.)

§ 2709. Interim authority to regulate gaming

Notwithstanding any other provision of this chapter, the Secretary shall continue to exercise those authorities vested in the Secretary on the day before October 17, 1988, relating to supervision of Indian gaming until such time as the Commission is organized and prescribes regulations. The Secretary shall provide staff and support assistance to facilitate an orderly transition to regulation of Indian gaming by the Commission.

(Pub. L. 100-497, § 10, Oct. 17, 1988, 102 Stat. 2472.)

§ 2710. Tribal gaming ordinances

(a) Jurisdiction over class I and class II gaming activity

(1) Class I gaming on Indian lands is within the exclusive jurisdiction of the Indian tribes and shall not be subject to the provisions of this chapter.

(2) Any class II gaming on Indian lands shall continue to be within the jurisdiction of the Indian tribes, but shall be subject to the provisions of this chapter.

(b) Regulation of class II gaming activity; net revenue allocation; audits; contracts

(1) An Indian tribe may engage in, or license and regulate, class II gaming on Indian lands within such tribe's jurisdiction, if—

(A) such Indian gaming is located within a State that permits such gaming for any purpose by any person, organization or entity (and such gaming is not otherwise specifically prohibited on Indian lands by Federal law), and

(B) the governing body of the Indian tribe adopts an ordinance or resolution which is approved by the Chairman.

A separate license issued by the Indian tribe shall be required for each place, facility, or location on Indian lands at which class II gaming is conducted.

(2) The Chairman shall approve any tribal ordinance or resolution concerning the conduct, or regulation of class II gaming on the Indian lands within the tribe's jurisdiction if such ordinance or resolution provides that—

(A) except as provided in paragraph (4), the Indian tribe will have the sole proprietary interest and responsibility for the conduct of any gaming activity;

(B) net revenues from any tribal gaming are not to be used for purposes other than—

(i) to fund tribal government operations or programs;

(ii) to provide for the general welfare of the Indian tribe and its members;

(iii) to promote tribal economic development;

(iv) to donate to charitable organizations;

or

(v) to help fund operations of local government agencies;

(C) annual outside audits of the gaming, which may be encompassed within existing independent tribal audit systems, will be provided by the Indian tribe to the Commission;

(D) all contracts for supplies, services, or concessions for a contract amount in excess of \$25,000 annually (except contracts for professional legal or accounting services) relating to such gaming shall be subject to such independent audits;

(E) the construction and maintenance of the gaming facility, and the operation of that gaming is conducted in a manner which adequately protects the environment and the public health and safety; and

(F) there is an adequate system which—

(i) ensures that background investigations are conducted on the primary management officials and key employees of the gaming enterprise and that oversight of such officials and their management is conducted on an ongoing basis; and

(ii) includes—

(I) tribal licenses for primary management officials and key employees of the gaming enterprise with prompt notification to the Commission of the issuance of such licenses;

(II) a standard whereby any person whose prior activities, criminal record, if any, or reputation, habits and associations pose a threat to the public interest or to the effective regulation of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming shall not be eligible for employment; and

(III) notification by the Indian tribe to the Commission of the results of such background check before the issuance of any of such licenses.

(3) Net revenues from any class II gaming activities conducted or licensed by any Indian

tribe may be used to make per capita payments to members of the Indian tribe only if—

(A) the Indian tribe has prepared a plan to allocate revenues to uses authorized by paragraph (2)(B);

(B) the plan is approved by the Secretary as adequate, particularly with respect to uses described in clause (i) or (iii) of paragraph (2)(B);

(C) the interests of minors and other legally incompetent persons who are entitled to receive any of the per capita payments are protected and preserved and the per capita payments are disbursed to the parents or legal guardian of such minors or legal incompetents in such amounts as may be necessary for the health, education, or welfare, of the minor or other legally incompetent person under a plan approved by the Secretary and the governing body of the Indian tribe; and

(D) the per capita payments are subject to Federal taxation and tribes notify members of such tax liability when payments are made.

(4)(A) A tribal ordinance or resolution may provide for the licensing or regulation of class II gaming activities owned by any person or entity other than the Indian tribe and conducted on Indian lands, only if the tribal licensing requirements include the requirements described in the subclauses of subparagraph (B)(i) and are at least as restrictive as those established by State law governing similar gaming within the jurisdiction of the State within which such Indian lands are located. No person or entity, other than the Indian tribe, shall be eligible to receive a tribal license to own a class II gaming activity conducted on Indian lands within the jurisdiction of the Indian tribe if such person or entity would not be eligible to receive a State license to conduct the same activity within the jurisdiction of the State.

(B)(i) The provisions of subparagraph (A) of this paragraph and the provisions of subparagraphs (A) and (B) of paragraph (2) shall not bar the continued operation of an individually owned class II gaming operation that was operating on September 1, 1986, if—

(I) such gaming operation is licensed and regulated by an Indian tribe pursuant to an ordinance reviewed and approved by the Commission in accordance with section 2712 of this title,

(II) income to the Indian tribe from such gaming is used only for the purposes described in paragraph (2)(B) of this subsection,

(III) not less than 60 percent of the net revenues is income to the Indian tribe, and

(IV) the owner of such gaming operation pays an appropriate assessment to the National Indian Gaming Commission under section 2717(a)(1) of this title for regulation of such gaming.

(ii) The exemption from the application of this subsection provided under this subparagraph may not be transferred to any person or entity and shall remain in effect only so long as the gaming activity remains within the same nature and scope as operated on October 17, 1988.

(iii) Within sixty days of October 17, 1988, the Secretary shall prepare a list of each individually owned gaming operation to which clause

(i) applies and shall publish such list in the Federal Register.

(c) Issuance of gaming license; certificate of self-regulation

(1) The Commission may consult with appropriate law enforcement officials concerning gaming licenses issued by an Indian tribe and shall have thirty days to notify the Indian tribe of any objections to issuance of such license.

(2) If, after the issuance of a gaming license by an Indian tribe, reliable information is received from the Commission indicating that a primary management official or key employee does not meet the standard established under subsection (b)(2)(F)(ii)(II) of this section, the Indian tribe shall suspend such license and, after notice and hearing, may revoke such license.

(3) Any Indian tribe which operates a class II gaming activity and which—

(A) has continuously conducted such activity for a period of not less than three years, including at least one year after October 17, 1988; and

(B) has otherwise complied with the provisions of this section¹

may petition the Commission for a certificate of self-regulation.

(4) The Commission shall issue a certificate of self-regulation if it determines from available information, and after a hearing if requested by the tribe, that the tribe has—

(A) conducted its gaming activity in a manner which—

(i) has resulted in an effective and honest accounting of all revenues;

(ii) has resulted in a reputation for safe, fair, and honest operation of the activity; and

(iii) has been generally free of evidence of criminal or dishonest activity;

(B) adopted and is implementing adequate systems for—

(i) accounting for all revenues from the activity;

(ii) investigation, licensing, and monitoring of all employees of the gaming activity; and

(iii) investigation, enforcement and prosecution of violations of its gaming ordinance and regulations; and

(C) conducted the operation on a fiscally and economically sound basis.

(5) During any year in which a tribe has a certificate for self-regulation—

(A) the tribe shall not be subject to the provisions of paragraphs (1), (2), (3), and (4) of section 2706(b) of this title;

(B) the tribe shall continue to submit an annual independent audit as required by subsection (b)(2)(C) of this section and shall submit to the Commission a complete resume on all employees hired and licensed by the tribe subsequent to the issuance of a certificate of self-regulation; and

(C) the Commission may not assess a fee on such activity pursuant to section 2717 of this

¹ So in original. Probably should be followed by a comma.

**(d) Federal agency personnel**

Upon the request of the Chairman, the head of any Federal agency is authorized to detail any of the personnel of such agency to the Commission to assist the Commission in carrying out its duties under this chapter, unless otherwise prohibited by law.

(e) Administrative support services

The Secretary or Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

(Pub. L. 100-497, § 8, Oct. 17, 1988, 102 Stat. 2471.)

REFERENCES IN OTHER LAWS TO GS-16, 17, OR 18 PAY RATES

References in laws to the rates of pay for GS-16, 17, or 18, or to maximum rates of pay under the General Schedule, to be considered references to rates payable under specified sections of Title 5, Government Organization and Employees, see section 529 [title I, § 101(c)(1)] of Pub. L. 101-509, set out in a note under section 5376 of Title 5.

§ 2708. Commission; access to information

The Commission may secure from any department or agency of the United States information necessary to enable it to carry out this chapter. Upon the request of the Chairman, the head of such department or agency shall furnish such information to the Commission, unless otherwise prohibited by law.

(Pub. L. 100-497, § 9, Oct. 17, 1988, 102 Stat. 2472.)

§ 2709. Interim authority to regulate gaming

Notwithstanding any other provision of this chapter, the Secretary shall continue to exercise those authorities vested in the Secretary on the day before October 17, 1988, relating to supervision of Indian gaming until such time as the Commission is organized and prescribes regulations. The Secretary shall provide staff and support assistance to facilitate an orderly transition to regulation of Indian gaming by the Commission.

(Pub. L. 100-497, § 10, Oct. 17, 1988, 102 Stat. 2472.)

§ 2710. Tribal gaming ordinances**(a) Jurisdiction over class I and class II gaming activity**

(1) Class I gaming on Indian lands is within the exclusive jurisdiction of the Indian tribes and shall not be subject to the provisions of this chapter.

(2) Any class II gaming on Indian lands shall continue to be within the jurisdiction of the Indian tribes, but shall be subject to the provisions of this chapter.

(b) Regulation of class II gaming activity; net revenue allocation; audits; contracts

(1) An Indian tribe may engage in, or license and regulate, class II gaming on Indian lands within such tribe's jurisdiction, if—

(A) such Indian gaming is located within a State that permits such gaming for any purpose by any person, organization or entity (and such gaming is not otherwise specifically prohibited on Indian lands by Federal law), and

(B) the governing body of the Indian tribe adopts an ordinance or resolution which is approved by the Chairman.

A separate license issued by the Indian tribe shall be required for each place, facility, or location on Indian lands at which class II gaming is conducted.

(2) The Chairman shall approve any tribal ordinance or resolution concerning the conduct, or regulation of class II gaming on the Indian lands within the tribe's jurisdiction if such ordinance or resolution provides that—

(A) except as provided in paragraph (4), the Indian tribe will have the sole proprietary interest and responsibility for the conduct of any gaming activity;

(B) net revenues from any tribal gaming are not to be used for purposes other than—

(i) to fund tribal government operations or programs;

(ii) to provide for the general welfare of the Indian tribe and its members;

(iii) to promote tribal economic development;

(iv) to donate to charitable organizations;

or

(v) to help fund operations of local government agencies;

(C) annual outside audits of the gaming, which may be encompassed within existing independent tribal audit systems, will be provided by the Indian tribe to the Commission;

(D) all contracts for supplies, services, or concessions for a contract amount in excess of \$25,000 annually (except contracts for professional legal or accounting services) relating to such gaming shall be subject to such independent audits;

(E) the construction and maintenance of the gaming facility, and the operation of that gaming is conducted in a manner which adequately protects the environment and the public health and safety; and

(F) there is an adequate system which—

(i) ensures that background investigations are conducted on the primary management officials and key employees of the gaming enterprise and that oversight of such officials and their management is conducted on an ongoing basis; and

(ii) includes—

(I) tribal licenses for primary management officials and key employees of the gaming enterprise with prompt notification to the Commission of the issuance of such licenses;

(II) a standard whereby any person whose prior activities, criminal record, if any, or reputation, habits and associations pose a threat to the public interest or to the effective regulation of gaming, or create or enhance the dangers of unsuitable, unfair, or illegal practices and methods and activities in the conduct of gaming shall not be eligible for employment; and

(III) notification by the Indian tribe to the Commission of the results of such background check before the issuance of any of such licenses.

(3) Net revenues from any class II gaming activities conducted or licensed by any Indian

tribe may be used to make per capita payments to members of the Indian tribe only if—

(A) the Indian tribe has prepared a plan to allocate revenues to uses authorized by paragraph (2)(B);

(B) the plan is approved by the Secretary as adequate, particularly with respect to uses described in clause (i) or (iii) of paragraph (2)(B);

(C) the interests of minors and other legally incompetent persons who are entitled to receive any of the per capita payments are protected and preserved and the per capita payments are disbursed to the parents or legal guardian of such minors or legal incompetents in such amounts as may be necessary for the health, education, or welfare, of the minor or other legally incompetent person under a plan approved by the Secretary and the governing body of the Indian tribe; and

(D) the per capita payments are subject to Federal taxation and tribes notify members of such tax liability when payments are made.

(4)(A) A tribal ordinance or resolution may provide for the licensing or regulation of class II gaming activities owned by any person or entity other than the Indian tribe and conducted on Indian lands, only if the tribal licensing requirements include the requirements described in the subclauses of subparagraph (B)(i) and are at least as restrictive as those established by State law governing similar gaming within the jurisdiction of the State within which such Indian lands are located. No person or entity, other than the Indian tribe, shall be eligible to receive a tribal license to own a class II gaming activity conducted on Indian lands within the jurisdiction of the Indian tribe if such person or entity would not be eligible to receive a State license to conduct the same activity within the jurisdiction of the State.

(B)(i) The provisions of subparagraph (A) of this paragraph and the provisions of subparagraphs (A) and (B) of paragraph (2) shall not bar the continued operation of an individually owned class II gaming operation that was operating on September 1, 1986, if—

(I) such gaming operation is licensed and regulated by an Indian tribe pursuant to an ordinance reviewed and approved by the Commission in accordance with section 2712 of this title.

(II) income to the Indian tribe from such gaming is used only for the purposes described in paragraph (2)(B) of this subsection,

(III) not less than 60 percent of the net revenues is income to the Indian tribe, and

(IV) the owner of such gaming operation pays an appropriate assessment to the National Indian Gaming Commission under section 2717(a)(1) of this title for regulation of such gaming.

(ii) The exemption from the application of this subsection provided under this subparagraph may not be transferred to any person or entity and shall remain in effect only so long as the gaming activity remains within the same nature and scope as operated on October 17, 1988.

(iii) Within sixty days of October 17, 1988, the Secretary shall prepare a list of each individually owned gaming operation to which clause

(i) applies and shall publish such list in the Federal Register.

(c) Issuance of gaming license; certificate of self-regulation

(1) The Commission may consult with appropriate law enforcement officials concerning gaming licenses issued by an Indian tribe and shall have thirty days to notify the Indian tribe of any objections to issuance of such license.

(2) If, after the issuance of a gaming license by an Indian tribe, reliable information is received from the Commission indicating that a primary management official or key employee does not meet the standard established under subsection (b)(2)(F)(ii)(II) of this section, the Indian tribe shall suspend such license and, after notice and hearing, may revoke such license.

(3) Any Indian tribe which operates a class II gaming activity and which—

(A) has continuously conducted such activity for a period of not less than three years, including at least one year after October 17, 1988; and

(B) has otherwise complied with the provisions of this section¹

may petition the Commission for a certificate of self-regulation.

(4) The Commission shall issue a certificate of self-regulation if it determines from available information, and after a hearing if requested by the tribe, that the tribe has—

(A) conducted its gaming activity in a manner which—

(i) has resulted in an effective and honest accounting of all revenues;

(ii) has resulted in a reputation for safe, fair, and honest operation of the activity; and

(iii) has been generally free of evidence of criminal or dishonest activity;

(B) adopted and is implementing adequate systems for—

(i) accounting for all revenues from the activity;

(ii) investigation, licensing, and monitoring of all employees of the gaming activity; and

(iii) investigation, enforcement and prosecution of violations of its gaming ordinance and regulations; and

(C) conducted the operation on a fiscally and economically sound basis.

(5) During any year in which a tribe has a certificate for self-regulation—

(A) the tribe shall not be subject to the provisions of paragraphs (1), (2), (3), and (4) of section 2706(b) of this title;

(B) the tribe shall continue to submit an annual independent audit as required by subsection (b)(2)(C) of this section and shall submit to the Commission a complete resume on all employees hired and licensed by the tribe subsequent to the issuance of a certificate of self-regulation; and

(C) the Commission may not assess a fee on such activity pursuant to section 2717 of this

¹ So in original. Probably should be followed by a comma.

title in excess of one quarter of 1 per centum of the gross revenue.

(6) The Commission may, for just cause and after an opportunity for a hearing, remove a certificate of self-regulation by majority vote of its members.

(d) Class III gaming activities; authorization; revocation; Tribal-State compact

(1) Class III gaming activities shall be lawful on Indian lands only if such activities are—

(A) authorized by an ordinance or resolution that—

(i) is adopted by the governing body of the Indian tribe having jurisdiction over such lands,

(ii) meets the requirements of subsection (b) of this section, and

(iii) is approved by the Chairman,

(B) located in a State that permits such gaming for any purpose by any person, organization, or entity, and

(C) conducted in conformance with a Tribal-State compact entered into by the Indian tribe and the State under paragraph (3) that is in effect.

(2)(A) If any Indian tribe proposes to engage in, or to authorize any person or entity to engage in, a class III gaming activity on Indian lands of the Indian tribe, the governing body of the Indian tribe shall adopt and submit to the Chairman an ordinance or resolution that meets the requirements of subsection (b) of this section.

(B) The Chairman shall approve any ordinance or resolution described in subparagraph (A), unless the Chairman specifically determines that—

(i) the ordinance or resolution was not adopted in compliance with the governing documents of the Indian tribe, or

(ii) the tribal governing body was significantly and unduly influenced in the adoption of such ordinance or resolution by any person identified in section 2711(e)(1)(D) of this title.

Upon the approval of such an ordinance or resolution, the Chairman shall publish in the Federal Register such ordinance or resolution and the order of approval.

(C) Effective with the publication under subparagraph (B) of an ordinance or resolution adopted by the governing body of an Indian tribe that has been approved by the Chairman under subparagraph (B), class III gaming activity on the Indian lands of the Indian tribe shall be fully subject to the terms and conditions of the Tribal-State compact entered into under paragraph (3) by the Indian tribe that is in effect.

(D)(i) The governing body of an Indian tribe, in its sole discretion and without the approval of the Chairman, may adopt an ordinance or resolution revoking any prior ordinance or resolution that authorized class III gaming on the Indian lands of the Indian tribe. Such revocation shall render class III gaming illegal on the Indian lands of such Indian tribe.

(ii) The Indian tribe shall submit any revocation ordinance or resolution described in clause (i) to the Chairman. The Chairman shall publish such ordinance or resolution in the Federal Register and the revocation provided by such ordi-

nance or resolution shall take effect on the date of such publication.

(iii) Notwithstanding any other provision of this subsection—

(I) any person or entity operating a class III gaming activity pursuant to this paragraph on the date on which an ordinance or resolution described in clause (i) that revokes authorization for such class III gaming activity is published in the Federal Register may, during the 1-year period beginning on the date on which such revocation ordinance or resolution is published under clause (ii), continue to operate such activity in conformance with the Tribal-State compact entered into under paragraph (3) that is in effect, and

(II) any civil action that arises before, and any crime that is committed before, the close of such 1-year period shall not be affected by such revocation ordinance or resolution.

(3)(A) Any Indian tribe having jurisdiction over the Indian lands upon which a class III gaming activity is being conducted, or is to be conducted, shall request the State in which such lands are located to enter into negotiations for the purpose of entering into a Tribal-State compact governing the conduct of gaming activities. Upon receiving such a request, the State shall negotiate with the Indian tribe in good faith to enter into such a compact.

(B) Any State and any Indian tribe may enter into a Tribal-State compact governing gaming activities on the Indian lands of the Indian tribe, but such compact shall take effect only when notice of approval by the Secretary of such compact has been published by the Secretary in the Federal Register.

(C) Any Tribal-State compact negotiated under subparagraph (A) may include provisions relating to—

(i) the application of the criminal and civil laws and regulations of the Indian tribe or the State that are directly related to, and necessary for, the licensing and regulation of such activity;

(ii) the allocation of criminal and civil jurisdiction between the State and the Indian tribe necessary for the enforcement of such laws and regulations;

(iii) the assessment by the State of such activities in such amounts as are necessary to defray the costs of regulating such activity;

(iv) taxation by the Indian tribe of such activity in amounts comparable to amounts assessed by the State for comparable activities;

(v) remedies for breach of contract;

(vi) standards for the operation of such activity and maintenance of the gaming facility, including licensing; and

(vii) any other subjects that are directly related to the operation of gaming activities.

(4) Except for any assessments that may be agreed to under paragraph (3)(C)(iii) of this subsection, nothing in this section shall be interpreted as conferring upon a State or any of its political subdivisions authority to impose any tax, fee, charge, or other assessment upon an Indian tribe or upon any other person or entity authorized by an Indian tribe to engage in a class III activity. No State may refuse to enter into

the negotiations described in paragraph (3)(A) based upon the lack of authority in such State, or its political subdivisions, to impose such a tax, fee, charge, or other assessment.

(5) Nothing in this subsection shall impair the right of an Indian tribe to regulate class III gaming on its Indian lands concurrently with the State, except to the extent that such regulation is inconsistent with, or less stringent than, the State laws and regulations made applicable by any Tribal-State compact entered into by the Indian tribe under paragraph (3) that is in effect.

(6) The provisions of section 1175 of title 15 shall not apply to any gaming conducted under a Tribal-State compact that—

- (A) is entered into under paragraph (3) by a State in which gambling devices are legal, and
- (B) is in effect.

(7)(A) The United States district courts shall have jurisdiction over—

(i) any cause of action initiated by an Indian tribe arising from the failure of a State to enter into negotiations with the Indian tribe for the purpose of entering into a Tribal-State compact under paragraph (3) or to conduct such negotiations in good faith,

(ii) any cause of action initiated by a State or Indian tribe to enjoin a class III gaming activity located on Indian lands and conducted in violation of any Tribal-State compact entered into under paragraph (3) that is in effect, and

(iii) any cause of action initiated by the Secretary to enforce the procedures prescribed under subparagraph (B)(vii).

(B)(i) An Indian tribe may initiate a cause of action described in subparagraph (A)(i) only after the close of the 180-day period beginning on the date on which the Indian tribe requested the State to enter into negotiations under paragraph (3)(A).

(ii) In any action described in subparagraph (A)(i), upon the introduction of evidence by an Indian tribe that—

- (I) a Tribal-State compact has not been entered into under paragraph (3), and
- (II) the State did not respond to the request of the Indian tribe to negotiate such a compact or did not respond to such request in good faith,

the burden of proof shall be upon the State to prove that the State has negotiated with the Indian tribe in good faith to conclude a Tribal-State compact governing the conduct of gaming activities.

(iii) If, in any action described in subparagraph (A)(i), the court finds that the State has failed to negotiate in good faith with the Indian tribe to conclude a Tribal-State compact governing the conduct of gaming activities, the court shall order the State and the Indian Tribe² to conclude such a compact within a 60-day period. In determining in such an action whether a State has negotiated in good faith, the court—

- (I) may take into account the public interest, public safety, criminality, financial integrity, and adverse economic impacts on existing gaming activities, and

(II) shall consider any demand by the State for direct taxation of the Indian tribe or of any Indian lands as evidence that the State has not negotiated in good faith.

(iv) If a State and an Indian tribe fail to conclude a Tribal-State compact governing the conduct of gaming activities on the Indian lands subject to the jurisdiction of such Indian tribe within the 60-day period provided in the order of a court issued under clause (iii), the Indian tribe and the State shall each submit to a mediator appointed by the court a proposed compact that represents their last best offer for a compact. The mediator shall select from the two proposed compacts the one which best comports with the terms of this chapter and any other applicable Federal law and with the findings and order of the court.

(v) The mediator appointed by the court under clause (iv) shall submit to the State and the Indian tribe the compact selected by the mediator under clause (iv).

(vi) If a State consents to a proposed compact during the 60-day period beginning on the date on which the proposed compact is submitted by the mediator to the State under clause (v), the proposed compact shall be treated as a Tribal-State compact entered into under paragraph (3).

(vii) If the State does not consent during the 60-day period described in clause (vi) to a proposed compact submitted by a mediator under clause (v), the mediator shall notify the Secretary and the Secretary shall prescribe, in consultation with the Indian tribe, procedures—

(I) which are consistent with the proposed compact selected by the mediator under clause (iv), the provisions of this chapter, and the relevant provisions of the laws of the State, and

(II) under which class III gaming may be conducted on the Indian lands over which the Indian tribe has jurisdiction.

(8)(A) The Secretary is authorized to approve any Tribal-State compact entered into between an Indian tribe and a State governing gaming on Indian lands of such Indian tribe.

(B) The Secretary may disapprove a compact described in subparagraph (A) only if such compact violates—

- (i) any provision of this chapter,
- (ii) any other provision of Federal law that does not relate to jurisdiction over gaming on Indian lands, or
- (iii) the trust obligations of the United States to Indians.

(C) If the Secretary does not approve or disapprove a compact described in subparagraph (A) before the date that is 45 days after the date on which the compact is submitted to the Secretary for approval, the compact shall be considered to have been approved by the Secretary, but only to the extent the compact is consistent with the provisions of this chapter.

(D) The Secretary shall publish in the Federal Register notice of any Tribal-State compact that is approved, or considered to have been approved, under this paragraph.

(9) An Indian tribe may enter into a management contract for the operation of a class III gaming activity if such contract has been submitted to, and approved by, the Chairman. The

²So in original. Probably should not be capitalized.

Chairman's review and approval of such contract shall be governed by the provisions of subsections (b), (c), (d), (f), (g), and (h) of section 2711 of this title.

(e) Approval of ordinances

For purposes of this section, by not later than the date that is 90 days after the date on which any tribal gaming ordinance or resolution is submitted to the Chairman, the Chairman shall approve such ordinance or resolution if it meets the requirements of this section. Any such ordinance or resolution not acted upon at the end of that 90-day period shall be considered to have been approved by the Chairman, but only to the extent such ordinance or resolution is consistent with the provisions of this chapter.

(Pub. L. 100-497, § 11, Oct. 17, 1988, 102 Stat. 2472.)

§ 2711. Management contracts

(a) Class II gaming activity; information on operators

(1) Subject to the approval of the Chairman, an Indian tribe may enter into a management contract for the operation and management of a class II gaming activity that the Indian tribe may engage in under section 2710(b)(1) of this title, but, before approving such contract, the Chairman shall require and obtain the following information:

(A) the name, address, and other additional pertinent background information on each person or entity (including individuals comprising such entity) having a direct financial interest in, or management responsibility for, such contract, and, in the case of a corporation, those individuals who serve on the board of directors of such corporation and each of its stockholders who hold (directly or indirectly) 10 percent or more of its issued and outstanding stock;

(B) a description of any previous experience that each person listed pursuant to subparagraph (A) has had with other gaming contracts with Indian tribes or with the gaming industry generally, including specifically the name and address of any licensing or regulatory agency with which such person has had a contract relating to gaming; and

(C) a complete financial statement of each person listed pursuant to subparagraph (A).

(2) Any person listed pursuant to paragraph (1)(A) shall be required to respond to such written or oral questions that the Chairman may propound in accordance with his responsibilities under this section.

(3) For purposes of this chapter, any reference to the management contract described in paragraph (1) shall be considered to include all collateral agreements to such contract that relate to the gaming activity.

(b) Approval

The Chairman may approve any management contract entered into pursuant to this section only if he determines that it provides at least—

(1) for adequate accounting procedures that are maintained, and for verifiable financial reports that are prepared, by or for the tribal governing body on a monthly basis;

(2) for access to the daily operations of the gaming to appropriate tribal officials who shall also have a right to verify the daily gross revenues and income made from any such tribal gaming activity;

(3) for a minimum guaranteed payment to the Indian tribe that has preference over the retirement of development and construction costs;

(4) for an agreed ceiling for the repayment of development and construction costs;

(5) for a contract term not to exceed five years, except that, upon the request of an Indian tribe, the Chairman may authorize a contract term that exceeds five years but does not exceed seven years if the Chairman is satisfied that the capital investment required, and the income projections, for the particular gaming activity require the additional time; and

(6) for grounds and mechanisms for terminating such contract, but actual contract termination shall not require the approval of the Commission.

(c) Fee based on percentage of net revenues

(1) The Chairman may approve a management contract providing for a fee based upon a percentage of the net revenues of a tribal gaming activity if the Chairman determines that such percentage fee is reasonable in light of surrounding circumstances. Except as otherwise provided in this subsection, such fee shall not exceed 30 percent of the net revenues.

(2) Upon the request of an Indian tribe, the Chairman may approve a management contract providing for a fee based upon a percentage of the net revenues of a tribal gaming activity that exceeds 30 percent but not 40 percent of the net revenues if the Chairman is satisfied that the capital investment required, and income projections, for such tribal gaming activity require the additional fee requested by the Indian tribe.

(d) Period for approval; extension

By no later than the date that is 180 days after the date on which a management contract is submitted to the Chairman for approval, the Chairman shall approve or disapprove such contract on its merits. The Chairman may extend the 180-day period by not more than 90 days if the Chairman notifies the Indian tribe in writing of the reason for the extension. The Indian tribe may bring an action in a United States district court to compel action by the Chairman if a contract has not been approved or disapproved within the period required by this subsection.

(e) Disapproval

The Chairman shall not approve any contract if the Chairman determines that—

(1) any person listed pursuant to subsection (a)(1)(A) of this section—

(A) is an elected member of the governing body of the Indian tribe which is the party to the management contract;

(B) has been or subsequently is convicted of any felony or gaming offense;

(C) has knowingly and willfully provided materially important false statements or information to the Commission or the Indian tribe pursuant to this chapter or has refused to respond to questions propounded pursuant to subsection (a)(2) of this section; or

PRESIDENTIAL DIRECTIVE FROM PRESIDENT WILLIAM (BILL) CLINTON CONCERNING ANY NEED FOR GOVERNMENT TO GOVERNMENT RELATIONSHIPS WITH ANY INDIAN TRIBES

Many Indian tribes make reference to Presidential Directives to deal with Indian tribes on a government to government basis. The first was one by President Nixon. The second one by President Clinton, #13175, is attached and expressly repeals the first directive 13084 by President Nixon (section 9 (c). As can be seen by the text of the directive and sections 1. (c), 8. and 10. this directive has no application to State County or municipal governments but is promulgated to all non-discretionary ***federal agencies*** and was promulgated to improve internal management of the executive branches of the federal government, federal policies and no other purposes.

Statement on Signing the Executive Order on Consultation and Coordination With Indian Tribal Governments

November 6, 2000

Today I am pleased to sign a revised Executive order on consultation with Indian tribal governments. This Executive order, itself based on consultation, will renew my administration's commitment to tribal sovereignty and our government-to-government relationship.

The first Americans hold a unique place in our history. Long before others came to our shores, the first Americans had established self-governing societies. Among their societies, democracy flourished long before the founding of our Nation. Our Nation entered into treaties with Indian nations, which acknowledged their right to self-government and protected their lands. The Constitution affirms the United States' government-to-government relationship with Indian tribes both in the Commerce Clause, which establishes that "the Congress shall have the Power To . . . regulate commerce . . . with the Indian Tribes," and in the Supremacy Clause, which ratifies the Indian treaties that the United States entered into prior to 1787.

Indian nations and tribes ceded lands, water, and mineral rights in exchange for peace, security, health care, and education. The Federal Government did not always live up to its end of the bargain. That was wrong, and I have worked hard to change that by recognizing the importance of tribal sovereignty and government-to-government relations. When I became the first President since James Monroe to invite the leaders of every tribe to the White House in April 1994, I vowed to honor and respect tribal sovereignty. At that historic meeting, I issued a memorandum directing all Federal agencies to consult with Indian tribes before making decisions on matters affecting American Indian and Alaska Native peoples.

Today, there is nothing more important in Federal-tribal relations than fostering true government-to-government relations to empower American Indians and Alaska Natives to improve their own lives, the lives of their children, and the generations to come. We

must continue to engage in a partnership, so that the first Americans can reach their full potential. So, in our Nation's relations with Indian tribes, our first principle must be to respect the right of American Indians and Alaska Natives to self-determination. We must respect Native Americans' rights to choose for themselves their own way of life on their own lands according to their time honored cultures and traditions. We must also acknowledge that American Indians and Alaska Natives must have access to new technology and commerce to promote economic opportunity in their homelands.

Today, I reaffirm our commitment to tribal sovereignty, self-determination, and self-government by issuing this revised Executive order on consultation and coordination with Indian tribal governments. This Executive order builds on prior actions and strengthens our government-to-government relationship with Indian tribes. It will ensure that all Executive departments and agencies consult with Indian tribes and respect tribal sovereignty as they develop policy on issues that impact Indian communities.

Executive Order 13175— Consultation and Coordination With Indian Tribal Governments

November 6, 2000

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications, to strengthen the United States government-to-government relationships with Indian tribes, and to reduce the imposition of unfunded mandates upon Indian tribes; it is hereby ordered as follows:

Section 1. Definitions. For purposes of this order:

(a) "Policies that have tribal implications" refers to regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution

of power and responsibilities between the Federal Government and Indian tribes.

(b) "Indian tribe" means an Indian or Alaska Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 479a.

(c) "Agency" means any authority of the United States that is an "agency" under 44 U.S.C. 3502(1), other than those considered to be independent regulatory agencies, as defined in 44 U.S.C. 3502(5).

(d) "Tribal officials" means elected or duly appointed officials of Indian tribal governments or authorized intertribal organizations.

Sec. 2. Fundamental Principles. In formulating or implementing policies that have tribal implications, agencies shall be guided by the following fundamental principles:

(a) The United States has a unique legal relationship with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, Executive Orders, and court decisions. Since the formation of the Union, the United States has recognized Indian tribes as domestic dependent nations under its protection. The Federal Government has enacted numerous statutes and promulgated numerous regulations that establish and define a trust relationship with Indian tribes.

(b) Our Nation, under the law of the United States, in accordance with treaties, statutes, Executive Orders, and judicial decisions, has recognized the right of Indian tribes to self-government. As domestic dependent nations, Indian tribes exercise inherent sovereign powers over their members and territory. The United States continues to work with Indian tribes on a government-to-government basis to address issues concerning Indian tribal self-government, tribal trust resources, and Indian tribal treaty and other rights.

(c) The United States recognizes the right of Indian tribes to self-government and supports tribal sovereignty and self-determination.

Sec. 3. Policymaking Criteria. In addition to adhering to the fundamental principles set forth in section 2, agencies shall adhere, to the extent permitted by law, to the following

criteria when formulating and implementing policies that have tribal implications:

(a) Agencies shall respect Indian tribal self-government and sovereignty, honor tribal treaty and other rights, and strive to meet the responsibilities that arise from the unique legal relationship between the Federal Government and Indian tribal governments.

(b) With respect to Federal statutes and regulations administered by Indian tribal governments, the Federal Government shall grant Indian tribal governments the maximum administrative discretion possible.

(c) When undertaking to formulate and implement policies that have tribal implications, agencies shall:

- (1) encourage Indian tribes to develop their own policies to achieve program objectives;
- (2) where possible, defer to Indian tribes to establish standards; and
- (3) in determining whether to establish Federal standards, consult with tribal officials as to the need for Federal standards and any alternatives that would limit the scope of Federal standards or otherwise preserve the prerogatives and authority of Indian tribes.

Sec. 4. Special Requirements for Legislative Proposals. Agencies shall not submit to the Congress legislation that would be inconsistent with the policymaking criteria in Section 3.

Sec. 5. Consultation. (a) Each agency shall have an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications. Within 30 days after the effective date of this order, the head of each agency shall designate an official with principal responsibility for the agency's implementation of this order. Within 60 days of the effective date of this order, the designated official shall submit to the Office of Management and Budget (OMB) a description of the agency's consultation process.

(b) To the extent practicable and permitted by law, no agency shall promulgate any regulation that has tribal implications, that imposes substantial direct compliance costs on Indian tribal governments, and that is not required by statute, unless:

- (1) funds necessary to pay the direct costs incurred by the Indian tribal government or the tribe in complying with the regulation are provided by the Federal Government; or
 - (2) the agency, prior to the formal promulgation of the regulation,
 - (A) consulted with tribal officials early in the process of developing the proposed regulation;
 - (B) in a separately identified portion of the preamble to the regulation as it is to be issued in the *Federal Register*, provides to the Director of OMB a tribal summary impact statement, which consists of a description of the extent of the agency's prior consultation with tribal officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of tribal officials have been met; and
 - (C) makes available to the Director of OMB any written communications submitted to the agency by tribal officials.
- (c) To the extent practicable and permitted by law, no agency shall promulgate any regulation that has tribal implications and that preempts tribal law unless the agency, prior to the formal promulgation of the regulation,
- (1) consulted with tribal officials early in the process of developing the proposed regulation;
 - (2) in a separately identified portion of the preamble to the regulation as it is to be issued in the *Federal Register*, provides to the Director of OMB a tribal summary impact statement, which consists of a description of the extent of the agency's prior consultation with tribal officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of tribal officials have been met; and
 - (3) makes available to the Director of OMB any written communications submitted to the agency by tribal officials.
- (d) On issues relating to tribal self-government, tribal trust resources, or Indian tribal treaty and other rights, each agency should explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking.
- Sec. 6. Increasing Flexibility for Indian Tribal Waivers.**
- (a) Agencies shall review the processes under which Indian tribes apply for waivers of statutory and regulatory requirements and take appropriate steps to streamline those processes.
- (b) Each agency shall, to the extent practicable and permitted by law, consider any application by an Indian tribe for a waiver of statutory or regulatory requirements in connection with any program administered by the agency with a general view toward increasing opportunities for utilizing flexible policy approaches at the Indian tribal level in cases in which the proposed waiver is consistent with the applicable Federal policy objectives and is otherwise appropriate.
- (c) Each agency shall, to the extent practicable and permitted by law, render a decision upon a complete application for a waiver within 120 days of receipt of such application by the agency, or as otherwise provided by law or regulation. If the application for waiver is not granted, the agency shall provide the applicant with timely written notice of the decision and the reasons therefor.
- (d) This section applies only to statutory or regulatory requirements that are discretionary and subject to waiver by the agency.
- Sec. 7. Accountability.**
- (a) In transmitting any draft final regulation that has tribal implications to OMB pursuant to Executive Order 12866 of September 30, 1993, each agency shall include a certification from the official designated to ensure compliance with this order stating that the requirements of this order have been met in a meaningful and timely manner.
- (b) In transmitting proposed legislation that has tribal implications to OMB, each agency shall include a certification from the official designated to ensure compliance with this order that all relevant requirements of this order have been met.

(c) Within 180 days after the effective date of this order the Director of OMB and the Assistant to the President for Intergovernmental Affairs shall confer with tribal officials to ensure that this order is being properly and effectively implemented.

Sec. 8. Independent Agencies. Independent regulatory agencies are encouraged to comply with the provisions of this order.

Sec. 9. General Provisions. (a) This order shall supplement but not supersede the requirements contained in Executive Order 12866 (Regulatory Planning and Review), Executive Order 12988 (Civil Justice Reform), OMB Circular A-19, and the Executive Memorandum of April 29, 1994, on Government-to-Government Relations with Native American Tribal Governments.

(b) This order shall complement the consultation and waiver provisions in sections 6 and 7 of Executive Order 13132 (Federalism).

(c) Executive Order 13084 (Consultation and Coordination with Indian Tribal Governments) is revoked at the time this order takes effect.

(d) This order shall be effective 60 days after the date of this order.

Sec. 10. Judicial Review. This order is intended only to improve the internal management of the executive branch, and is not intended to create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law by a party against the United States, its agencies, or any person.

William J. Clinton

The White House,
November 6, 2000.

[Filed with the Office of the Federal Register, 8:45 a.m., November 8, 2000]

NOTE: This Executive order was published in the *Federal Register* on November 9.

Statement on Signing the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2001

November 6, 2000

Today I am pleased to sign into law H.R. 4811, the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2001. As I have often said, there is a right and a wrong way to conduct budget negotiations. When we have worked together, we have unfailingly made progress. When there is a genuine spirit of cooperation and compromise, we can accomplish great things for our people. This Act, the result of just such a bipartisan effort, supports our efforts to promote peace and stability around the world, in turn helping to make our Nation more safe and secure.

I am particularly pleased that this legislation funds our landmark initiative to provide debt relief to the poorest of the world's nations. By fully funding our commitment to debt relief, the bill supports this historic effort to give these poorest countries a critical opportunity to effect reform while using funds to reduce poverty and provide basic health care and education for their people. I commend the bipartisan efforts in the Congress to fund this vital program, as well as efforts of all those across the political spectrum who joined forces to secure this critically important funding.

Likewise, I am pleased that this legislation dramatically increases funding to fight HIV/AIDS. In nations around the world, HIV/AIDS is a leading cause of death and is undermining decades of effort to reduce mortality, improve health, expand educational opportunities, and lift people out of poverty. The funds provided by the bill will significantly expand our prevention and treatment efforts in Africa and other regions of the world to turn the tide against this deadly pandemic.

This legislation also helps strengthen our efforts to support democracy and stability in Southeastern Europe, the Newly Independent States, and other key regions. In particular, it includes increased funding for our continued efforts to support democracy and reform in Kosovo, and to support the

CASE DECISIONS THAT DEMONSTRATE THE
DIFFICULTY IN OBTAINING A LEGALLY
ENFORCEABLE CONTRACT WITH AN INDIAN
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LAWSUIT CAN BE DEFEATED BY A TRIBE
SEEKING TO EVADE LEGAL RESPONSIBILITY
FOR TRIBAL BREACHES OF THAT CONTRACT

EXAMPLES OF CASE DECISIONS

1. Hydro Thermal Energy Co. v Fort Bidwell Indian Community (Cal. App. 2d. 1985) 170 Cal. App.3d 489 [Tribal officer has no authority to waive immunity]
2. Dawavendewa v Salt River Project Agricultural Improvement District (9th Circ. 2002) 276 F.3d 1150 [Tribe not bounds by unauthorized tribal actions]
3. Ramey Construction Co. v Apache Tribe USCA 10th Dist.) 169 F.3d 1173 (tribal immunity can be raised at any time in the proceedings even on appeal]
4. Guidiville Band of Pomo Indians v NGV Gaming Ltd. (9th circ. 2008) 531 F.3d 767 (contract void as not approved by the United States as required by law)
5. Nooksack Indian Tribe v Outsource Service Management Co. (USDC West. Dist. Of Washington case no. 12 CV 00411 TSZ (2013) Nooksack tribe's various claims to evade payment included the claim that the agreement for 26 million in construction funds was unenforceable because it amounted to a management contract under the IGRA 25 USC 2711 and had to be approved in advance by the Secretary of Interior

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12 October 2015

Amy Dutschke
Regional Director
Bureau of Indian Affairs
Pacific Regional Office
2800 Cottage Way
Sacramento, CA 95825

Re: More proposed fee to trust transfers
by the Santa Ynez Band

Dear Director Dutschke;

In connection with a County hearing that was set for an ad hoc committee meeting I received information that the Santa Ynez Band of Mission Indians (calling themselves Chumash descendants) had actually made application to transfer into trust approximately 2 more acres of land next to their gambling casino. That class III casino and hotel is located on approximately 75 acres of fee land owned by the United States by virtue of a Quitclaim gift deed from the Catholic Church in 1938.

Recent title research reveals the land is not a lawfully created Indian "reservation" by either Act of Congress or Presidential decree or "set aside." Neither has that parcel of land been taken into Indian trust pursuant to 25 U.S.C. 465, the Indian Reorganization Act and is currently in violation of 25 U.S.C. 2703 (4) and 25 C.F.R. 573.5 (12) & (13).

Although my clients and I received no proper notice and have not been furnished with a copy of the Santa Ynez application to bring this two (2) acre parcel into Indian trust status, there are several things readily apparent and in need of formal comment in opposition to this proposed transfer.

The following comments are identified and are made and they are not exclusive to those applicable reasons this land is ineligible for transfer to trust. Such a transfer

to trust is improper, illegal and not in the interest of the citizens of the community of Santa Ynez, the County of Santa Barbara, the State of California and the United States, nor the members of this small band of Indian descendants in this federally acknowledged tribe.

1. We understand the application asserts that these 2 parcels of approximately 2 acres ***are adjacent to or abutting a tribal reservation***. This assertion is false. The approximately 75 acre parcel that abuts these proposed 2 acre parcels are merely lands gifted to the United States and owned in fee simple. The United States has allowed the Santa Ynez Band of Mission Indians to occupy and use this land and is either not fully aware of the facts or is ignoring the fact the land is being used to construct and operate and continue to operate a class III gambling casino in violation of 25 U.S.C. 2703 (4) and 25 C.F.R. 573.5 (12) and (13).

2. We understand that the application asserts that the land must be brought into trust to utilize “grey-water” irrigation. This is false and merely an excuse to cover the real purpose of the acquisition which is an improper attempt to extend the boundary of lands owned by the Santa Ynez Band in fee in a direction toward other fee lands they own including the 1,427 acre parcel identified as the “Camp 4” property in an effort to bridge and connect these several parcels of land to try to claim they are or will be “abutting” or “adjacent” to “their claimed” reservation. Thus they believe they can evade the criteria required for all fee to trust transfer set out in 25 C.F.R. 151.11 for off reservation trust land acquisitions and instead claim they have the ability to use the lesser standard for fee to trust approval set out in 25 C.F.R. 151.10 for reservation lands.

3. The Santa Ynez Band of Mission Indians did not become a political governmental entity and Indian tribe until 1964 and was not acknowledged by the United States as an Indian Tribe until 1979. This originally unorganized community of individual Indians did not exist as an Indian tribe on or before 18 June 1934 had no government and no intergovernment relationship with the United States. This unorganized community of Indian descendants was therefore not under the jurisdiction of the United States. Accordingly they are not an Indian tribe eligible to transfer land into trust under the provisions of the Indian Reorganization Act [I.R.A. 25 U.S.C. 465] [Carcieri v. Salazar, [2009] 555 U.S.] 379.

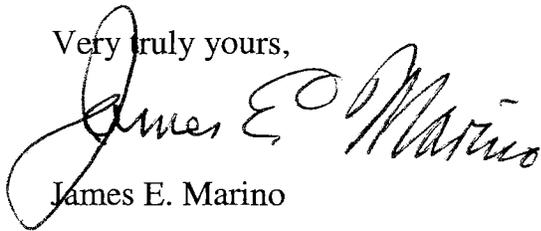
4. The applications for the transfers of fee lands by Indian tribes within the jurisdiction of the Pacific Regional Agency of the Department of Interior, Bureau of Indian Affairs, are evaluated by an entity described as the “***tribal consortium***,” an entity controlled by the same Indian tribes seeking transfers of land into trust. This group unlawfully influences and determines actions in fee to trust evaluations and approvals that are required to be exclusively determined by agencies of the United States. This “***consortium***” is a patent conflict of interest and improperly corrupts the fee to trust process required by law. The use of the “***consortium***” and

consortium agreements is an illegal conflict of interest resulting in unlawful bias, prejudice and violation of constitutional rights of the community. The delegation of authority to determine whether or not privately owned fee lands should be taken from the State and local jurisdictions of State and Municipal governments is subject to the Constitutional substantive and procedural due process and the impartial and fair evaluation of rights of non-Indian citizens and communities as set out in 25 C.F.R. part 153.11 and part 153.10 and is required by the due process provisions of the United States Constitution and California Constitution.

5. The proposed transfer does not contain any of the analysis required by law including the National Environmental Policy Act nor any assessment of the cumulative impacts of several fee to trust proposals and transfers now pending or proposed for the Santa Ynez Band of Mission Indians in the immediate vicinity nor does it demonstrate any credible need for this band of 135 enrolled members currently earning millions of dollars from their gambling casino and business enterprises, valued at over \$225,000,000 million dollars. The vast majority of the current wealthy members receiving over \$50,000 a month in profit distributions and per capital distributions, are elders and the tribal membership has shrunk by 20% over the past 10 years and will continue to shrink and contract. There is therefore **NO** demonstrable need to transfer this 2 acre parcel in this latest fee to trust transfer proposal amongst many others currently being sought, and any approval is arbitrary, capricious, contrary to law and should not be allowed.

6. The proposed fee to trust transfer is also violative of the tribal-state gaming compact in effect with the State of California and also Art. 4 section 19 of the California Constitution.

Very truly yours,

A handwritten signature in black ink that reads "James E. Marino". The signature is written in a cursive, flowing style with a large initial "J".

James E. Marino

cc: Santa Barbara County Board of Supervisors
U.S. Senator Diane Feinstein
National Indian Gaming Commission
Governor Edmond G. (Jerry) Brown

Sent by Certified Mail

Copy sent by FAX

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 **COPY**

October 2, 2015

Secretary of Interior
Sally Jewell
Department of Interior
1849 C Street, N.W.
Washington, D.C. 202040

Dear Secretary Jewell;

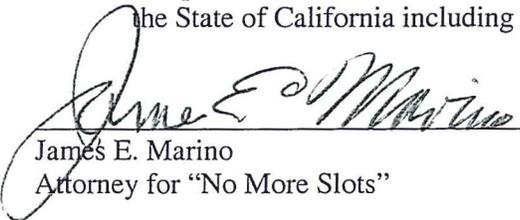
Pursuant to the existing Memorandum of Understanding between the United States Interior Department and the National Indian Gaming Commission all determinations of whether or not land is a reservation, trust or restricted land eligible for a class III casino pursuant to 25 U.S.C. 2703 (4) is the responsibility of the Department of Interior.

The determination to be made by the N.I.G.C. prior to licensing class II or class III gaming is whether or not the Indian tribe operating a class III casino is a lawfully acknowledged Indian tribe exercising governmental control over those lands, determined by the D.O.I. to be eligible Indian lands under 25 U.S.C. 2703 (4).

Any Indian tribe operating a class III casino that is not located entirely on such land eligible for gaming under the I.G.R.A. is subject to immediate closure under 25 C.F.R. 574.3 (13).

Please consider this letter as a formal request made under the Freedom of Information Act [F.O.I.A.] for the following documents and information.

1. Any and all reports, memoranda, records, correspondence and written recorded documents or other evidence from which, or upon which, the determination was made that the approximately 75 acres of land upon which the Santa Ynez Band of Mission Indians [now calling themselves "Chumash"] are currently operating a class III gambling casino is eligible land for Indian gaming under 25 U.S.C. 2703(4).
2. Included in this F.O.I.A. request is all the records, documents, writings, correspondence and information used to approve a tribal-state compact for class III gaming on this site and which compact was entered into between the Santa Ynez Band of Mission Indians (Chumash) and the State of California including any amendments or renewals to that tribal-state compact.


James E. Marino
Attorney for "No More Slots"

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October 2, 2015

Governor Jerry Brown
c/o State Capitol, Suite 1173
Sacramento, CA 95814

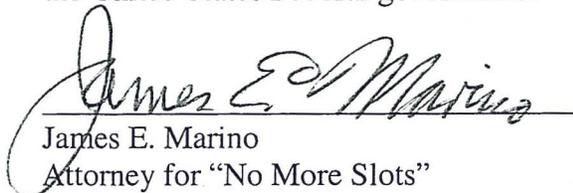
Dear Governor Brown;

I wrote you previously in a letter including an informal request for information and records and did not receive any reply, a copy of that letter is enclosed.

Accordingly this letter is a formal request for, and request to produce, any and all the public information and records hereinafter set out.

1. All records, memoranda, correspondence or other documents and written evidence and communications verifying, establishing and confirming that the compact you recently executed to authorize class III gaming on the approximately 75 acre parcel of land [on which the Santa Ynez Band of Mission Indians, calling themselves Chumash] are operating a class III gambling casino, is in fact eligible "Indian lands" as required by 25 United States Code 2703 (4) and 25 Code of Federal Regulation 574.3 (12) and (13).
2. All records, memoranda, correspondence or other documents and written evidence and communications verifying, establishing and confirming that the compact you recently executed to authorize class III gaming on the approximately 75 acre parcel of land [on which the Santa Ynez Band of Mission Indians, calling themselves Chumash] are operating a class III gambling casino, and which documents and investigation establish that site is eligible "Indian lands" as required by Article 4 section 19 of the California Constitution.

Please include with these records, documents, correspondence and information any and all Indian lands eligibility determinations made by or for the State of California or determined by any other California State agency or officer or by any person or agency of the United States Federal government.


James E. Marino
Attorney for "No More Slots"