

Northern California Counties Tribal Matters Consortium General Policy Principles

I. Introduction

California, more than any other state, has experienced an explosion of tribal gaming and land development since the 1988 enactment of the Indian Gaming Regulatory Act (“IGRA”). This development accelerated in California with the 1999 passage of Proposition 1A, and the 1998 passage of Proposition 5. The result is over 55 operational casinos maintained by 53 tribal governments in 34 counties, with at least 25 additional tribal casinos in the planning stage. The scope of potential casino development is also reflected in the over 100 federally recognized tribes in California, with over 60 existing compacts, many of them providing for two casinos per tribe. As these IGRA casinos have proliferated, increased tribal gaming wealth, or its promise, has provided capital for still more gaming and non-gaming tribal development. All levels of state government now face significant challenges raised by tribal development initiatives. It is a key consideration that these tribal development proposals are generally governed by federal Indian law, which affords little protection to communities struggling to address the profound local impacts that often accompany gaming or other large tribal projects.

A. Purpose of the Consortium

Many tribal development initiatives, particularly gaming, have regional impacts beyond any specific jurisdiction. The Northern California Counties Tribal Matters Consortium (“Consortium”) is founded by county governments based on the realization that they must work together to share expertise and respond effectively to the federal legal and policy decisions driving tribal development.

Along the legal pathway to any type of tribal development, there are a series of federal decisions and procedural steps. These steps may include tribal acknowledgment, land acquisition, fee-to-trust land conversion, Indian lands determinations, approvals for gaming uses of trust lands, and approvals for gaming itself. Most of the steps offer a role and some measure of influence for the state and affected local governments. While this role is not as strong as it should be, it does afford an opportunity to take action. Proactive state and local participation is crucial as federal decisions are under consideration, because once made, jurisdiction over the tribal entity and its members is vitiated by the tribe's sovereign status, and key local regulatory powers are preempted once the property becomes tribal land. Formation of

the Consortium is important to allow local governments to work together to understand the rules and laws applicable to tribal status and development and to play a meaningful and united role in shaping federal and state decisions.

County coordination is especially critical in Northern California where a growing number of tribal entities are attempting to acquire land, seek trust status, and advance development proposals for casinos and other uses in locations based solely upon market appeal. Some tribes are attempting to develop land without regard to current reservation location or the existence of historic or other significant ties to a chosen location. There are many legal permutations of "reservation shopping," and many jurisdictions are forced to deal with the complex legal issues it raises, often on an emergency basis. Reservation shopping is fueled by improved tribal financial capability, usually through third-party investors. This creates the ability not only to buy land, but also to sustain long-term procedural and political campaigns and legal disputes, often exploiting ambiguous federal rules and policies.

Federal laws, regulations, and policies do provide states and local government with some opportunity to influence the outcome of tribal land development issues. Whether an affected state or local government can effectively take advantage of the procedural opportunities available to them depends on the governmental entity's knowledge of federal law and procedures, its readiness to respond appropriately, and its commitment to persevere in a position. A consortium of counties provides a more influential body to address federal or state legislative and administrative proposals regarding tribal matters.

B. Consortium Goals

The Consortium has been organized to inform member counties of federal Indian law and policy so that they can effectively exercise their authority to respond to emerging policy and tribal development proposals. Each county belonging to the Consortium has varying degrees of experience with the conversion of fee land to federal trust status on behalf of Indian tribes and related proposals to develop that land for gaming or other economic purposes. In almost all cases, tribal plans for trust lands are inconsistent with the host county's general plans, ordinances, zoning, environmental standards or other policies. These lands and the facilities built on them become exempt from state and local taxation, and land use control, and potentially lead to serious adverse consequences on affected communities. The Consortium's goal is to develop common principles that will guide the actions of each county and enable them to influence legislative and administrative policies in order to avoid or reduce impacts as much as possible. These general principles are intended to provide a proactive foundation for county action regarding trust land proposals, to give advance notice of county policies and standards to those who intend to propose tribal

development on such land, and to advise federal and state decisionmakers of a county's position. The Consortium approach explicitly recognizes the distinction between tribal entities that have significant documented ties to specific locations in a county and those that do not. While federal processes may also apply to this determination, Consortium counties will make their own determination with respect to such ties. This will guide county responses to tribal development proposals or development initiatives, and assist the counties in taking positions in federal proceedings. The presumption is that proposals by tribal entities without significant ties to specific locations in a county will be generally opposed and therefore ineligible for agreements with the counties. Those having significant documented ties will be eligible for government-to-government discussions and potential agreements consistent with Consortium principles.

II. Consortium Basic Principles

The following principles represent the Consortium's general policies toward tribal trust land acquisitions and other development proposals on trust lands:

- A.** The Consortium is opposed to any federal fee-to-trust request on behalf of any tribe that lacks significant, long-term and documented ties to the specific location in the county where the trust land acquisition or development is proposed.

The policy presumption is that each Consortium county will oppose any trust land request, regardless of the developmental purpose, where the tribe on behalf of which trust status is proposed, lacks significant ties. Counties will make their own determination on this issue and will be active participants in applicable federal proceedings. Until the county in question is satisfied that such ties exist, or are reasonably likely to be proven, no proposals for county-tribal agreements will be entertained, and other agreements related to the trust land proposal, such as those involving local governments or the State, will be disfavored.

- B.** In circumstances where a county is satisfied that a tribe, or an unrecognized group seeking federal acknowledgment as a tribal entity, has significant ties to a specific location, Consortium member counties:
 - 1. Will work with the Tribe on a government-to-government basis to consider development proposals within the policy framework of the Consortium;
 - 2. Will consider proposals to have land placed into trust for any development purpose in accordance with applicable legal authority on tribal purpose, need, and other factors, and to ensure

consistency with county ordinances, zoning, environmental standards, health and safety standards, and other applicable development rules and standards;

3. Will disfavor gaming-related proposals until it is conclusively shown that the development is fully consistent with Consortium principles and is in the best interest of the county;
4. Will reserve the right to participate actively in any tribal acknowledgment proceeding based on the merits of the petition;
5. Will oppose federal acknowledgment proposals by groups seeking federal recognition outside the BIA administrative process (by legislation, for example) in the absence of approval of the county or an existing county-tribal agreement;
6. Will require that any county-tribal agreement fully mitigate environmental impacts of the proposed project and that there will be guarantees of substantial compliance with county ordinances, zoning and environmental policies through a Memorandum of Understanding or similar agreement, in which the tribe must provide a sufficient waiver of tribal sovereign immunity to permit enforcement of the agreement; and
7. Will oppose the Congressional designation of trust land or the authorization of trust land selections in the absence of approval of the county or the existence of a county-tribal agreement.

III. Implementation Guidelines

In carrying out these principles, Consortium counties agree that they will be committed to the following:

- A. Mutual Respect. The counties will be committed to respectful government-to-government relationships with tribal entities and recognize the unique role and interest of each. The same respect extends to the affected state and local governments. The concept of reciprocal respect will guide the actions of Consortium members.
- B. Information Gathering. The counties affected by tribal development proposals will obtain information needed to evaluate the unique character of tribal status and the impacts of tribal development on the

community, and the well-being and economic self-sufficiency of the tribal entity.

- C. Education. The counties will develop, on an individual county or cooperative basis, a public education program to promote informed decisions on tribal proposals.
- D. Active Participation. To protect local interests, the counties, through the Consortium, will participate actively and appropriately in state and federal policy and legislative processes to support the principles of the Consortium.
- E. Trust Land/Development Response. The counties will ensure that any fee-to-trust transaction or other tribal development proposal by a recognized tribe:
 - 1. Is subject to a comprehensive agreement (e.g., Memorandum of Understanding) enforceable in federal or state court between the tribal entity and the county;
 - 2. Is consistent with the county's general plan;
 - 3. Undergoes environmental review that is at least equivalent to the level of environmental review applicable to any comparable non-tribal proposal, including impacts, cumulative impacts, mitigation requirements, and other factors;
 - 4. Includes enforceable provisions between the tribal entity and the county under which the tribal entity agrees to make payments to compensate for the government services typically covered by applicable taxes, to provide a negotiated fair share for health, welfare, and safety services, and to offset impacts of whatever developmental activity is proposed. This recognizes that such costs include: a) processing and administrative costs (such as permitting); b) impact mitigation; and c) the ongoing impacts of the activity or development;
 - 5. Provides for the payment or mitigation from tribal entities to cover all public sector costs and economic impacts (police, fire, sewer, road, education, housing and others) associated with any development on trust lands;

6. Satisfies the health and safety standards (ordinances) of the county, either directly or by enforceable (third part enforcement) tribal ordinances;
7. Includes enforceable conditions and limitations with respect to the future development and/or changed use of any land that is to be placed in trust on behalf of the tribal entity; and
8. Includes a limited waiver of sovereign immunity of the tribal entity sufficient to permit enforcement of the terms of an agreement in federal or state court, or includes acceptable alternative enforcement provisions.

F. Federal, Tribal, State and Local Government Relationships. With respect to relationships between the counties and the Federal government, tribal governments, the State of California, and local governments in each respective County:

1. The counties will respect and seek partnerships consistent with these principles and the legal rights and responsibilities of these other governments to further mutual economic development, sustainable energy approaches, and mitigation of significant project environmental impacts;
2. The counties will seek to be included as stakeholders in all consultations, legislative, regulatory, administrative and/or project reviews affecting Indian policies or land bearing on or potentially concerning their jurisdictions;
3. The counties will seek adequate notice and opportunity for meaningful input in the reviews listed in item 2 above, including Indian land determinations, fee-to-trust applications, and considerations of whether proposed gaming projects are detrimental to the local community;
4. Wherever possible, the counties will provide relevant information and assistance as trust land acquisitions and related tribal development proposals are considered;
5. The counties will communicate these principles and standards to these governments and interested parties; and

6. The counties will seek to make decisions that are consistent with the interests of local governments within the counties that are likely to be significantly impacted by any proposed development.

IV. Conclusion

Tribal gaming and economic development on trust land presents significant challenges and potential opportunities to local governments. Through these principles, the counties in the Consortium will cooperate in efforts that protect the public interest, foster mutual interests, and provide information to tribal governments regarding the expectations that must be met to proceed with development activities. The ultimate goal is to establish a foundation upon which legitimate tribal development initiatives can proceed through a process of mutual respect and cooperation while fully protecting local community and tribal rights and interests.