

SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

231



FROM: EXECUTIVE OFFICE

SUBMITTAL DATE: March 26, 2003

SUBJECT: A Report on Indian Gaming in Riverside County

RECOMMENDED MOTION: That the Board of Supervisors approve the recommendations outlined on page 9 of the report.

BACKGROUND: On November 5, 2002, Agenda Item 3.28, the Board directed the Executive Office to develop a comprehensive policy to address the impacts on County services resulting from development on Indian land.

The attached report provides an overview of the off-reservation impacts of casino development and/or expansion, mitigation financing strategies, and recommendations for a coordinated approach to collaborating with Indian Gaming Tribes for the mutual benefit of the County, the Tribes, and the environment.

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FINANCIAL DATA:

CURRENT YEAR COST

N/A

ANNUAL COST:

N/A

NET COUNTY COST

N/A

IN CURRENT YEAR BUDGET:

Yes/ No/

BUDGET ADJUSTMENT FY:

Yes/ No/ FY 2002/03

SOURCE OF FUNDS:

C.E.O. RECOMMENDATION: Approve.

Barbara Munmore

County Executive Officer Signature

Policy

Policy

Consent

Consent

Department Recommendation:

Per Executive Office:

A REPORT ON INDIAN GAMING
IN RIVERSIDE COUNTY

April 2003

Submitted By:
County Executive Office

**A REPORT ON INDIAN GAMING
IN RIVERSIDE COUNTY**

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Background

Indian Nations are considered dependent sovereign nations under the protection of the federal government. While the U.S. government recognizes tribal sovereignty, the U.S. Congress is recognized by the Courts as having the sole right to limit the sovereign powers of tribes. Tribes have their own laws, and are subject to some federal laws, including the Endangered Species Act, the Clean Water Act and the Clean Air Act. Few of the state regulations, and none of the County's laws and ordinances, apply on tribal lands. However, gaming tribes are subject to the provisions of the tribal-state compact.

The Indian Gaming Regulatory Act (IGRA) regulates gambling on Indian Lands. Tribes may operate Class III games (including slot machines and banking card games) only if the tribe and state have agreed to a tribal-state compact that allows such games. After the state and tribe have reached an agreement, the federal government must approve the compact before it is valid. On March 7, 2000, California voters approved Proposition 1A legalizing slot machine and banking card games on Tribal lands and putting into effect 61 tribal-state gaming compacts, most of which were approved in September 1999.

California is home to 109 federally recognized tribes, including 11 in Riverside County (see discussion below), and 50 Indian casinos operating a total of 47,000 slot machines. Fifty-four additional tribes are currently seeking federal recognition.

Tribal-State Compacts

California's gaming compacts were designed to evidence goodwill and cooperation among tribes and the state, implement a means of regulating Class III gaming on tribal lands to ensure fair and honest operation, and promote ethical practices through the licensing and control of persons employed in providing goods and services. Compacts, which limit the number of slot machines to 2000 per tribe, are in effect until December 31, 2020. Federally recognized tribes operating fewer than 200 slot machines are "non-compact" tribes.

The tribal-state compacts can be re-opened by either the Governor or the Tribes under certain conditions. The Governor may any time after January 1, 2003, but no later than March 1, 2003 request negotiations with tribal governments to amend Section 10.8 of the compacts on the grounds that the section "has proven inadequate to protect the off-reservation environment from significant adverse impacts resulting from projects undertaken by a tribe or to ensure adequate mitigation by the tribe of significant adverse off-reservation environmental impacts." On February 28, 2003, the Governor sent a letter to all 61 compacted tribes and requested renegotiation on environmental grounds.

In January 2003, preceding the Governor's formal request to enter into negotiations, the Governor released his Fiscal Year 2003/04 Proposed Budget that included \$1.5 billion from tribes to help solve the state's \$34.6 billion budget deficit. A coalition of 22 tribes responded that they would be willing to negotiate with the Governor regarding the compacts and would be open to the possibility of paying some sort of fee in exchange for the authority to operate more slot machines.

The California State Association of Counties (CSAC) and the League of California Cities have made recommendations to the Governor on areas in the compacts that can be improved.

Tribes in Riverside County

Riverside County is home to 11 federally recognized tribes (see Table 1). With the exception of the Torres Martinez Desert Cahuilla Tribe, all have compacts with the state to operate gaming. Currently, nine tribal casinos are operated in Riverside County (see attached map).

Table 1: Tribal Gaming Locations in Riverside County

Tribe	Casino Location	Games
Agua Caliente Band of Cahuilla Indians	Spa Resort Casino, Palm Springs Agua Caliente Casino, Rancho Mirage	2,000 slot machines 93 table games
Augustine Band of Mission Indians	Augustine Casino, Coachella	347 slot machines 8 table games
Cabazon Band of Mission Indians	Fantasy Springs Casino, Indio	1,500 slot machines 21 table games
Cahuilla Band of Indians	Cahuilla Creek Casino, Anza	200 slot machines 3 table games
Morongo Band of Mission Indians	Casino Morongo, Cabazon	2,000 slot machines 48 table games
Pechanga Band of Luiseno Indians	Pechanga Resort and Casino, Temecula	2,000 slot machines 84 table games
Ramona Band of Mission Indians		
Santa Rosa Band of Mission Indians		
Soboba Band of Luiseno Indians	Soboba Casino, San Jacinto	2,000 slot machines 18 table games
Torres Martinez Desert Cahuilla		
Twenty-Nine Palms Band of Mission Indians	Trump 29 Casino, Coachella	1,600 slot machines 35 table games

Planned Casino/Hotel Development and Expansion in Riverside County

As gaming provides an opportunity to enhance the socio-economic status of tribes, proposals are being generated to develop and expand tribal casinos.

Fantasy Springs Expansion

The Cabazon Tribe of Mission Indians advised the County in Fall 2002 of plans to expand their existing gaming facility into a destination resort. At that time, the tribe requested the County's assistance in securing tax exempt financing for the proposed \$185 million expansion. The phased expansion will be completed in three stages: first

stage completion in 2003, second stage completion 2004, and final completion 2005. The Board adopted Resolution No. 2002-377, referring the request to the California Statewide Communities Development Authority for consideration. As partial mitigation for impacts caused by the proposed facility, an agreement was developed whereby the East Valley Tourist Development Authority (EVTDA) will collect an amount equal to 10% of the base overnight hotel rate from guests which will be forwarded to the County. Presently, the request for financing is still being reviewed by the Statewide Authority.

Torres-Martinez New Facility

The Torres-Martinez Desert Cahuilla Indians were awarded \$14.2 million in 2002 by the federal government and two water districts as compensation for land lost when the Salton Sea flooded. Under the settlement, the tribe can use the money to purchase up to 11,800 acres of replacement land that will be incorporated into the reservation. The tribe wants to buy land along Interstate 10 east of Indio for a casino.

In early 2003, the Board of Supervisors received a request from the Torres-Martinez tribe expressing their desire to obtain tax exempt financing for a development project at some future time. The scope of the project is yet to be defined, but it will include a gaming facility. The Tribe was informed that once their project was defined the County would consider their request in a manner similar to the Cabazon request.

Morongo Casino/Hotel Expansion and Relocation

In February 2003, the Morongo Band of Mission Indians released an environmental study for the Morongo Casino/Hotel. Spanning 44 acres, the new casino complex would expand and relocate the tribe's existing casino with a new casino, proposed 23-story hotel, and five story parking structure. The proposed 309-foot tall structure would be about twice as tall as the County Administrative Center building in Riverside. The tribe plans to open the facility in early 2005.

The Executive Office is coordinating written comments from county departments on the environmental study for submission to the Tribe.

Overview of Off-Reservation Impacts of Casino Development/ Expansion

One of the oldest Indian gaming facilities in California exists in Riverside County. The Morongo Band of Mission Indians opened a small bingo venture in Cabazon in 1983. Although most County departments do not collect data to measure the impacts of casino development and operation, the most prevalent impacts of casino development can be summarized from the County's twenty-year history of gaming and shared experiences from other counties.

Public Safety

Public safety and law enforcement are commonly thought of as the most impacted services by casinos. Gaming, alcohol, entertainment, and large groups of people in relatively small areas, coupled with twenty-four hour a day operation, generally result in increased crime, calls for law enforcement assistance, and prosecution. Gaming communities like Las Vegas and Atlantic City are known for attracting a criminal element. To the extent that Tribal casinos also have to confront criminal activity, local

law enforcement can be challenged with devoting additional resources to assist Tribal police and supporting intelligence directed at detecting and addressing organized crime. Moreover, the physical safety of casino patrons and employees must be ensured.

Tribal police/rangers and/or casino security generally patrol Tribal casinos, on-site entertainment arenas, and surrounding grounds. Local law enforcement may be summoned when illegal activity is beyond the control of Tribal police. Deputy Sheriffs and municipal police officers are P.O.S.T. trained and certified thereby equipped to respond and deal with the gamut of criminal activities or crowd unrest that may arise. Some state lawmakers have recognized the impact of tribal gaming on law enforcement by proposing grants to mitigate impacts to law enforcement agencies (see Legislative Policy discussion below). However, such proposals are not sensitive to the array of criminal justice services following an incident that impact County provided justice services, including jail confinement, prosecution/district attorney, public defender, court, and probation.

The Sheriff has designated his Executive Officer as liaison to all tribes in the County. Negotiations are currently underway to develop a law enforcement agreement with the Morongo Band of Mission Indians. Trained Sheriff deputies will augment Tribal police and the agreement will be presented to the Board of Supervisors for approval. As with services provided to contract cities, reimbursement is expected from the Tribe.

Tribal casinos also require the assistance of local fire departments in response to fires or medical emergencies. Three tribes in Riverside County have formed their own fire departments (one staffed fire company) primarily to serve their casino. The other tribes rely solely on the fire protection services of the County.

Tribal fire departments can reduce the number of medical assistance requests to the reservation. However, they are not sufficient to address incidents resulting from large crowds such as concerts, boxing events, or nightly fireworks. Often ingress and egress is difficult due to traffic and parking arrangements of events. According to one Tribal Fire Chief, there is approximately one call per day to the casino for medical assistance. Expansion of casinos will tax small Tribal fire departments and increase the need for County provided fire and emergency medical assistance. High-rise hotels on reservations may pose significant challenges associated with their height and water supply.

Health and Welfare

Health and Welfare impacts related to gaming may include: increased addictive behaviors (compulsive gambling, alcoholism and drug use), financial hardship, and child neglect.

Increased addictive behaviors impact the County's mental health programs, but also go beyond traditional counseling services. Addictions are often supported by other criminal behaviors that lead to Court and criminal justice involvement. Senior citizens make up a substantial portion of gaming clientele. The California Council on Problem Gambling reports that physical problems may arise in seniors who forego vital functions to continue gambling.

Losses sustained from gaming may lead to financial hardships and increased reliance on public assistance. Loss of job, gambling with credit cards, and long-term marital/relationship problems are all associated with problem gambling. In some cases, compulsive gamblers result to bankruptcy as a perceived solution. Experts, however, view bankruptcy as a detriment to the recovery process. Child Protective Services (CPS) may intervene when gambling and associated behaviors divert family resources away from basic children's needs.

Casino employees and patrons without health insurance in need of medical assistance will impact the County health system. Typically, the uninsured use emergency rooms for minor medical attention more appropriate for clinic or doctors' offices. Patients requiring Level II trauma care are transported to the Riverside County Regional Medical Center (RCRMC) for care.

Land Use and Development

Transportation

The majority of Indian tribes were settled on reservations in remote, and desolate areas, often with hilly landscapes. Development in these locations present challenges to the local transportation system. Tribal lands are connected to freeways and state highways, in most cases by County roads constructed to handle development in the unincorporated area. These roads are typically inadequate to accommodate increased volume from a major traffic generator such as a Tribal casino. The type and concentration of traffic may lead to safety and maintenance concerns on existing County roads. The County Transportation Department maintains certain roadways within or adjacent to the border of Tribal lands. As development occurs and roads are improved and widened, associated maintenance responsibility increases accordingly. Moreover, as the maintenance agency, the County remains liable on these roads for traffic safety claims.

Building and Safety

Tribal governments are not required to comply with county codes, city ordinances, state building codes, or environmental laws. Therefore, the County does not perform building inspection and plan review of Tribal developments. It is available to tribes by virtue of an MOU with the County Building and Safety Department at the same rate charged to the general public. The impact of such reviews relates to the physical safety of casino patrons and employees in the event of a disaster. Absent local building inspections and plan review, the County's ability to provide post disaster services could be significantly strained.

Currently, the Building and Safety Department has an MOU in place with the Agua Caliente Band of Cahuilla Indians. This Land Use Agreement, in effect since October 4, 1989, provides for a joint land planning effort with the purpose of formulating and agreeing on amendments to the County's General Plan, zoning, and related land use controls. The County may collect and retain all fees that provide direct compensation for the actual costs in carrying out its duties as the tribe's agent.

Flood Control

Any development has the potential to impact water flows. Generally, compliance with flood control requirements is a condition of building permits. Development on Tribal land is not subject to the same review and compliance, and therefore, can increase water flows on downstream properties leading to the need for additional and/or larger flood control infrastructures. Moreover, deposit of sediment and debris in downstream facilities could result in blockage of essential facilities inhibiting flows between watersheds and potential flooding. Costly detention facilities and additional flood control infrastructure may be needed.

Summary

The above is not an exhaustive list of off-reservation impacts from casino development. It is intended to provide a broad overview of the types of challenges facing local governments as tribes develop and expand gaming facilities. Up to this point, most departments have not collected data specific to casino related issues. However, as casinos become more and more prevalent, the need to track this information is apparent. Departments are being instructed to collect data regarding impacts to County programs and services. As opportunities become available to mitigate impacts, documentation of the effect of casino development and gaming on County programs and services will be essential. Following a year of data collection, the Board will be briefed on the findings.

Mitigation of Impacts

Present state and federal laws do not expressly provide a role for county and other local governments concerning mitigation of off-reservation impacts from tribal casinos and other tribal businesses. The tribal-state compact does provide for tribes to meet and discuss mitigation of significant adverse off-reservation environmental impacts with local governments resulting from casinos, but does not require the tribe to reach agreement with the affected agency

Tribal casinos provide employment and stimulate the economy by purchasing goods and services from local businesses. Casino revenue enhances the financial status of the tribe, advancing self-sufficiency. As discussed above, however, casino development also generates impacts beyond the boundaries of the reservation. Off-reservation impacts can be financially and programmatically burdensome to local agencies as they attempt to address the resulting health and safety issues. Mitigation payments to local governments were one of the purposes of the Special Distribution Fund, established by the compacts and ratified by state law. However, absent a methodology for distribution, it cannot be determined if impacts to local governments will be even partially mitigated. Many local governments have entered into agreements or MOUs with tribal governments that not only address mitigation, but also support development on tribal lands. Enhanced government-to-government relationships have proven to advance the goals of all parties.

Special Distribution Fund

The tribal-state compacts and existing law (GC §12012.85) create in the State Treasury the Indian Gaming Special Distribution Fund (SDF) for the receipt of revenue (estimated at \$51 million annually) which is received by the state from Indian gaming. The tribal

compacts require certain tribes to contribute a percentage of gaming proceeds to the SDF. Contributions range between 0% and 13% of the net win on the number of machines that were in operation on September 1, 1999.

Under governing law, the funds in the SDF are to be available for:

- Grants, including any administrative costs, for programs designed to address gambling addiction;
- Grants, including administrative costs, for the support of state and local government agencies impacted by tribal government gaming;
- Compensation for regulatory costs incurred by the State Gaming Agency and the Department of Justice in connection with the implementation and administration of tribal-state gaming compacts;
- Payment of shortfalls in the Revenue Sharing Trust Fund (a fund that appropriates monies to non-gaming tribes); and
- Any other purpose specified by the Legislature.

Twenty-eight tribes operating more than 200 machines each, as of September 1999, began making contributions into the SDF in October 2002. The first allocation was due to occur in January 2003; however, the Legislature is yet to adopt a methodology for allocating funds.

On February 25, 2003 (Agenda Item 3.38), the Riverside County Board of Supervisors adopted Resolution No. 2003-105 supporting the Indian Gaming Local Community Benefits Act developed by the Tribal Alliance of Sovereign Nations (TASIN) Local Government Committee. TASIN, a coalition of 14 federally recognized tribes operating a total of nine casinos in Riverside, San Bernardino, and Santa Barbara counties, contributed \$16 million to the SDF as their first quarter payment in October 2002. It is estimated that 2/3 of all payments into the SDF will come from TASIN tribes. The Local Community Benefits Act was designed to create a mechanism whereby revenues generated by contributing tribes are re-directed back to the locally impacted communities.

While several proposals for distribution of the SDF have been introduced in the Legislature (see Legislative Policy below), to date, none reflect the TASIN proposal.

Agreements with Individual Tribes

Each casino development project is unique in its attributes and impacts on local government services. Location and size of a facility directly affects the off-reservation impacts. As discussed above, the County has assisted in advancing tribal development concepts and entered into agreements with tribes to partially mitigate impacts.

Tribes are required to prepare an environmental study on development projects and circulate the study for review. Review and comment on the planned development is a starting point for the county to begin identifying potential off-reservation impacts. Similar to its role with LAFCO, the Executive Office can serve as a liaison for the Board to tribes in communicating off-reservation impacts and negotiating potential mitigation agreements.

Section 11 of the Indian Gaming Regulatory Act (IGRA) recognizes potential impacts from gaming by stipulating that net revenues from any tribal gaming are not to be used for purposes other than as shown below:

- To fund tribal government operations or programs;
- To provide for the general welfare of the Indian tribe and its members;
- To promote tribal economic development;
- To donate to charitable organizations; or
- To help fund operations of local government agencies.

As discussed above, although the tribal-state compact does provide for tribes to meet and discuss mitigation of significant adverse off-reservation environmental impacts with local governments resulting from casinos, it does not require an agreement be reached. However, enhanced government-to-government relations, through County support of tribal projects and reciprocal mitigation from tribes, can benefit all residents of Riverside County.

Legislative Policy

On February 25, 2003 (Agenda Item 3.38), the Board adopted Resolution No. 2003-105 supporting the Indian Gaming Community Benefits Act developed by the Tribal Alliance of Sovereign Nations' (TASIN) Local Government Committee, for allocating and distributing the Indian Gaming Special Distribution Fund. The Act was designed to create a mechanism to return a portion of the revenues back to local communities near the contributing tribes. The proposed allocation schedule provides for:

- 40% to cities and counties adjacent to casino operated by paying tribes;
- 20% to cities and counties impacted by gaming conducted by paying tribes;
- 30% to cities and counties impacted by gaming not operated by paying tribes and grants for state agencies impacted by gaming; and
- 10% to address gambling addiction and state regulatory costs.

Counties would administer the 20% allocated for cities and counties that are impacted by gaming conducted by paying tribes. Deposit of these funds into the local treasury removes the opportunity for the state to allocate them for "Any other purpose(s) specified by the Legislature." Most recently, the state Legislative Analyst Office (LAO) proposed shifting funds from the SDF to the Citizen Options for Public Safety (COPS) program and mental health programs to provide gambling addiction services. The Senate Housing, Land Use and Transportation subcommittee directed the LAO and budget staff to work together on other programs that could be funded with the money from the SDF.

The TASIN proposal further recommends that the state hire a neutral party to conduct a study within three years to determine the impacts of gaming and revisit the above formula for possible modification, based on actual data.

Legislation reflecting the Indian Gaming Community Benefits Act has not been introduced. Four legislative bills (AB 113, AB 131, AB 1275, SB 930) proposing non-substantive, technical changes have been introduced. These bills are viewed as "spot"

bills available for later substantive amendment. Senate Bill 769 (Battin) is the most substantive bill to date. Senate Bill 769:

- Creates the Indian Gaming Local Communities Investment Board to determine eligibility of funding requests;
- The Investment Board is comprised of 15 members including two representatives of CSAC—one each from a rural and urban area.
- Establishes two accounts within the Special Distribution Fund (SDF)--
 - 1) The Local Law Enforcement Mitigation Account that provides a minimum grant of \$100,000 to each impacted local law enforcement agency; and
 - 2) The Capital Improvement Mitigation Account that provides grants to local governments for capital expenditures for unintended impacts from tribal gaming.

Senate Bill 769 does not recognize local government service impacts resulting from gaming, such as judicial related costs (e.g., district attorney, public defender, probation, or emergency services, environmental impacts, behavioral health, and public health). Moreover, funds are retained in the state treasury and vulnerable to other uses specified by the legislature.

Recommendations

Based on the information presented in this report, the Executive Office recommends that the Board of Supervisors:

- 1) Actively pursue the development of mutually beneficial intergovernmental relationships with all Indian tribes in the County;
- 2) Pursue cooperative agreements with tribes, including mitigation where warranted, to ensure adequate infrastructure and services, prior to the opening of gaming or other intensive facilities on Reservations;
- 3) Request tribes who are in a position to do so, allocate a portion of gaming revenues for grants to “help fund operations of local government agencies,” as provided by Section 11 of IGRA;
- 4) Encourage tribes to contract primarily with local vendors and service providers;
- 5) Continue to collaborate with TASIN to advance the Local Community Benefits Act, developed by the Local Government Committee to allocate the Special Distribution Fund (SDF), which is based on returning a portion of the TASIN tribes’ payments back to the local communities impacted by their gaming operations;
- 6) Appoint the County Executive Officer, or his designee, as liaison to tribes in the county to centralize intergovernmental relations, including: review and recommendation of requests for financial assistance, coordination of responses to expansion projects, and negotiation of agreements to mitigate impacts resulting from development projects.