



NATIONAL INDIAN GAMING ASSOCIATION

Rebuilding Communities Through Indian Self-Reliance

June 18, 2008

The Honorable Dale Kildee
2107 Rayburn
Washington DC 20515

The Honorable Tom Cole
236 Cannon
Washington DC 20515

Dear Congressman Kildee and Congressman Cole:

On behalf of the National Indian Gaming Association ("NIGA"), I write to you as the co-chairs of the House Native American Caucus ("Caucus"). Some members of the Caucus have expressed interest in NIGA's position concerning off-reservation gaming. At our NIGA Executive Board meeting on April 19, 2008, the NIGA Board passed a motion to reaffirm NIGA's standing position on off-reservation gaming, which reaffirms resolutions adopted at NIGA's Membership meetings in Phoenix in 2007 and Albuquerque in 2008.

The attached Memorandum to the NIGA Executive Board explains our longstanding positions and repeats the operative language of our standing resolutions. **These resolutions establish a policy that Tribes seeking to conduct off-reservation gaming should do so within their own aboriginal or historic areas.**

Please let us know if we can be of further assistance. Thank you for your thoughtful consideration.

Sincerely,

Ernest L. Stevens, Jr.
Chairman



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NATIONAL INDIAN GAMING ASSOCIATION RESOLUTION

2 ABQ 4-4-06

Supporting The Secretary Of Interior's Promulgation Of Regulations Concerning Gaming On After-Acquired Lands and opposing the provisions of S. 2078 and H.R. 4893 that would amend Section 20 of the Indian Gaming Regulatory Act (IGRA)

WHEREAS, the National Indian Gaming Association (NIGA) is an intertribal association of 184 federally recognized Indian Tribes established to protect Indian gaming and defend Indian sovereignty; and

WHEREAS, Indian Tribes are governments that pre-date the United States and through the Indian Commerce Clause and the Treaty Clause, the Constitution of the United States recognizes the status of Indian Tribes as sovereigns; and

WHEREAS, in treaties, the United States pledged to protect Indian Tribes and guaranteed the right of tribal self-government; and

WHEREAS, Indian Tribes conduct Indian gaming as an exercise of inherent sovereign authority to fund tribal government functions and services and to provide for the general welfare of tribal members; and

WHEREAS, in *California v. Cabazon* (1987), the Supreme Court reaffirmed the inherent right of Indian Tribes to conduct Indian gaming as an essential element of tribal self-government, free from state interference; and

WHEREAS, in 1988, Congress enacted the IGRA to promote Tribal economic development, self-sufficiency, strong Tribal Governments, and reflects a delicate balance of Tribal, Federal, and State Sovereign interests; and

WHEREAS, Indian gaming is the Native American success story and through Indian gaming, Indian Tribes have created more than 550,000 jobs, fund essential government services including education, health care, police and fire services, water, sewer, and sanitation services, transportation, child care and elderly nutrition, and museums and cultural centers; and

WHEREAS, the NIGA-NCAI Joint Task Force on gaming held five (5) Tribal Leaders' meetings across the country to discuss the issue of gaming on after-acquired lands (or so-called "off-reservation" lands); and

WHEREAS, the overwhelming majority of Tribal Leaders voiced their opposition to amending IGRA over the issue of gaming on after-acquired lands; and



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WHEREAS, the Bureau of Indian Affairs (BIA) has established an internal guideline titled "Checklist For Gaming-Related Acquisitions And IGRA Section 20 Determinations for implementation of the Indian Gaming Regulatory Act (IGRA) Section 20", which was amended on March 7, 2005, without consulting Tribal Governments in violation of the government-to-government policy of the United States; and

WHEREAS, Section 20 of the IGRA (25 U.S.C. § 2719) establishes a general rule that Indian gaming shall be conducted only on Indian lands held prior to 1988, with exceptions for contiguous lands, landless Indian Tribes, newly recognized Indian Tribes, restored tribes, land claims settlements, and the Section 20 two-part determination for off-reservation land; and

WHEREAS, under the Section 20 two-part determination, the Secretary of the Interior must consult with state and local officials and nearby Indian Tribes to determine that any proposed gaming on after-acquired lands is in the best interests of the applicant tribe and not detrimental to the surrounding community which includes nearby Indian Tribes; then the Governor must concur in the Secretary's determination before the applicant tribe may conduct gaming on the off-reservation land; and

WHEREAS, through IGRA, Congress provided State and local governments a voice in Indian gaming policy through the Section 20 two-part determination process and through the Tribal-State Compact process; and

WHEREAS, the reality of "off-reservation" gaming is far different than the media misrepresentations and in fact since the enactment of IGRA in 1988 only three Indian Tribes have ever successfully navigated the Section 20 two-part process: all three Tribes had the support of the local government and the concurrence of the Governor; and

WHEREAS, Tribal Governments acknowledge the responsibility to speak on their own behalf regarding gaming locations under the Section 20 two-part process, to promote factual media coverage and reduce public misunderstanding of the land into trust process; and

WHEREAS, Tribal Governments have a long history of respect for and consultation with neighboring Tribes and local governments, which is reflected within the Section 20 two-part process and the Department of Interior Section 20 checklist; and

WHEREAS, S. 2078 and H.R. 4893 punish those Tribes who have invested substantial resources in the Section 20 two-part determination process, and

WHEREAS, there have been recent efforts to bypass the Section 20 two-part process through appropriation riders without the benefit of Congressional hearings and tribal input; and



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NOW THEREFORE BE IT RESOLVED, NIGA strongly opposes amending Section 20 of the Indian Gaming Regulatory Act, as proposed in S. 2078 and H.R. 4893;

BE IT FURTHER RESOLVED, NIGA opposes legislation that would diminish the sovereign rights of Tribal Governments and opposes any effort to subordinate Tribal Governments to local governments;

BE IT FURTHER RESOLVED, NIGA does hereby call upon Tribal Governments proposing off-reservation gaming locations to promote positive relationships with State and local governments and minimize impacts on the aboriginal rights of nearby Tribes;

BE IT FURTHER RESOLVED, NIGA does hereby call upon Tribal Governments proposing off-reservation gaming locations under the Section 20 two-part Determination Process to demonstrate both: 1) aboriginal or historical connection; and 2) cultural ties, based upon actual inhabitation, to the proposed site, and to promote positive relationships with State and local governments and minimize impacts on the aboriginal rights of nearby Tribes;

BE IT FURTHER RESOLVED, that NIGA calls upon state and Tribal Governments to work together to ensure that local government concerns are addressed through the existing Tribal-State Compact process and the Section 20 two-part determination process;

BE IT FURTHER RESOLVED, that NIGA does hereby call upon Congress to adhere to the significant process set forth in IGRA's Section 20 with due deliberation process of Congress and to refrain from appropriations riders that bypass Section 20 or otherwise amend IGRA;

BE IT FINALLY RESOLVED, that NIGA supports the promulgation of regulations by the Department of Interior, working directly with Tribal Governments in accordance with Executive Order 13175, governing the implementation of the Section 20 two-part determination process, respecting the interests and rights of Tribal Governments, including nearby Indian Tribes, and state and local governments.



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To: NIGA Executive Board

Fr: Chairman Ernest L. Stevens, Jr.
Vice-Chairman Kevin Leecy

Date: May 5, 2008

Re: Executive Board Action on April 19, 2008

On April 19, 2008 the Executive Board of the National Indian Gaming Association held a regular scheduled meeting in San Diego, California. The Executive Board reaffirmed Phoenix resolution **1-PHX-GM-3-28-07**¹, which in turn reaffirmed the Albuquerque resolution **2-ABQ-4-4-06**.

¹ The resolved clause of the Phoenix resolution states "**NOW THEREFORE BE IT RESOLVED**, that NIGA reaffirms the position taken in Resolution 2 ABQ 4-4-06, and will continue to work with the Department of the Interior on its efforts to promulgate regulations to implement Section 20 of IGRA and to ensure that full consultation with Indian Tribes nationwide is accomplished prior to promulgation of a final rule."

The resolved clauses of the Albuquerque resolution state "**NOW THEREFORE BE IT RESOLVED**, NIGA strongly opposes amending Section 20 of the Indian Gaming Regulatory Act, as proposed in S. 2078 and H.R. 4893; **BE IT FURTHER RESOLVED**, NIGA opposes legislation that would diminish the sovereign rights of Tribal Governments and opposes any effort to subordinate Tribal Governments to local governments; **BE IT FURTHER RESOLVED**, NIGA does hereby call upon Tribal Governments proposing off-reservation gaming locations to promote positive relationships with State and local governments and minimize impacts on the aboriginal rights of nearby Tribes; **BE IT FURTHER RESOLVED**, NIGA does hereby call upon Tribal Governments proposing off-reservation gaming locations under the Section 20 two-part Determination Process to demonstrate both: 1) aboriginal or historical connection; and 2) cultural ties, based upon actual inhabitation, to the proposed site, and to promote positive relationships with State and local governments and minimize impacts on the aboriginal rights of nearby Tribes; **BE IT FURTHER RESOLVED**, that NIGA calls upon state and Tribal Governments to work together to ensure that local government concerns are addressed through the existing Tribal-State Compact process and the Section 20 two-part determination process; **BE IT FURTHER RESOLVED**, that NIGA does hereby call upon Congress to adhere to the significant process set forth in IGRA's Section 20 with due deliberation process of Congress and to refrain from appropriations riders that bypass Section 20 or otherwise amend IGRA; **BE IT FINALLY RESOLVED**, that NIGA supports the promulgation of regulations by the Department of Interior, working directly with Tribal Governments in accordance with Executive Order 13175, governing the implementation of the Section 20 two-part determination process, respecting the interests and rights of Tribal Governments, including nearby Indian Tribes, and state and local governments."