

**TULARE COUNTY INDIAN GAMING
LOCAL COMMUNITY BENEFIT COMMITTEE**

10 a.m. August 2, 2012

MEETING NOTICE

**TULE RIVER INDIAN RESERVATION
TRIBAL ADMINISTRATION BUILDING
340 N. RESERVATION ROAD
PORTERVILLE, CA 93257**

NOTICE TO THE PUBLIC - PUBLIC COMMENT PERIOD

At this time, members of the public may comment on any item not appearing on the agenda. Under state law, matters presented under this item cannot be discussed or acted upon by the Committee at this time. For items appearing on the agenda, the public is invited to make comments at the time the item comes up for Committee consideration. Any person addressing the Committee will be limited to a maximum of three (3) minutes so that all interested parties have an opportunity to speak. At all times, please state your name and address for the record.

AGENDA

- 1. Call to Order & Roll Call**
- 2. Public Comment**
- 3. Approve minutes from the April 5, 2012 meeting**
- 4. Update on Indian Gaming Committee membership**
- 5. Legislative report on future Indian Gaming funding**
- 6. Review of 2012 grant projects**
- 7. Report on response from California State Auditor**
- 8. Direction to Staff regarding Committee Counsel**
- 9. Discussion of Committee Bylaws**
- 10. Lunch: Noon to 1 p.m., Eagle Mountain Casino Buffet. 681 S. Tule Reservation Rd. Porterville, CA 93257**
- 11. Next Meeting – Thursday, October 18, 2012. 10 a.m. (Place: TBA)**
- 12. Adjourn**

Contact Person: Jed Chernabaeff or John Hess, Tulare County Staff (559) 636-5005

As a courtesy to those in attendance, please turn off or place in alert mode all cell phones and pagers.

Information concerning items on this Agenda is available for public consideration during normal working hours at the Board of Supervisors office at 2800 W. Burrel Ave., Visalia, CA 93291. The staff will assist in answering questions.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Clerk of the Board's Office at (559) 636-5000.

CLOSED SESSION

**NOTICE TO THE PUBLIC
CLOSED SESSIONS**

As provided in the Ralph M. Brown Act, Government Code sections 54950 et seq., the Tulare County Indian Gaming Local Community Benefit Committee may meet in closed session with members of its staff, employees, and its attorneys. These sessions are not open to the public and may not be attended by members of the public. The matters the Committee will meet on in closed session are identified below or are those matters appropriately identified in open session as requiring immediate attention and arising after the posting of the agenda. Any public reports of action taken in the closed session will be made in accordance with Government Code sections 54957.1

It is the intention of the Committee to meet in closed session concerning:

ITEM A

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Significant Exposure to Litigation [(Government Code Section 54956.9 (b)(1))]

Number of Potential Cases: 5

As a courtesy to those in attendance, please turn off or place in alert mode all cell phones and pagers.

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In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the Clerk of the Board's Office at (559) 636-5000.

Local Community Benefit Committee
Minutes, April 5, 2012

Present: Mike Ennis, Joe Garcia, Cam Hamilton, Rhoda M. Hunter, Robin Skiles, Greg Shelton

Staff: Allison Pierce and Nina Dong

Public: John Lollis, Charmaine McDarment, Michelle McDarment, John Hess

1. Call to Order, 10:01 AM
2. Public Comment: There was no comment from the public.
3. Approval of minutes from August 3, 2011: Robin Skiles motioned to accept the minutes as submitted, the motion was seconded by Mike Ennis, and the motion was approved unanimously by the Committee.
4. Discussion and approval of the nexus test criteria: Nina Dong gave a slideshow presentation explaining eligibility for grant funds, the nexus test criteria for geographical proximity grant funds and application. Nina Dong stated that the statutory language in Gov. Code sec. 12715 (c), (d) and (e) allows for Sierra View Healthcare District to be considered eligible for either the 60% geographical proximity grant funds or 40% discretionary grant funds, depending on how the Committee interprets it. Nina Dong stated that the City of Porterville is eligible for the 40% discretionary grant funds because it does not meet the requirements to be proximate to an "individual Indian land upon which a tribal casino is located", in this case, the Reservation. Committee members voted unanimously to find that Sierra View Healthcare District is eligible for the 40% discretionary grant funds and the City of Porterville is eligible for the 60% geographical proximity grant funds due to its proximity to the Tule River Indian Tribe's Porterville Airpark property (the Tule River Economic Development Corporation Industrial Park – TREDCIP).

As a side note and request, Rhoda Hunter asked the Commission review the bylaws, as the latest version of the current bylaws date to 2004 and per guidelines, the bylaws are to be reviewed and approved every three years.

5. Review and award Tulare County Indian Gaming grant funding. Authorize Chairman to sign agreements subject to County Counsel approval
 - a. Staff presentation: Allison Pierce presented recommendations on the following grant requests:
 - i. City of Porterville: 1) To continue building police firing range, fund Juvenile Diversion Officer; fund anti-gang programs and service and 2) Fund fire prevention and public education officer; add

structure fire-training prop to training facility. This request was not recommended for funding because application did not explain what percentage of overall need is attributable to impact of casino. The portion of the application related toward the juvenile diversion officer explains connection to Native American population, but did not speak to the impact of casino. Staff also noted the request to fund \$50,000 would pay salary and the application does not explain what would happen to program after grant ends.

- ii. Kaweah Delta Healthcare District: Elevated helipad next to ER. This application was recommended for funding because the application states that in 2001 approximately 2.4% of ER visits were from casino jurisdiction area, and applicant is requesting 2.4% of project costs.
- iii. Sierra View Health Care District: Diabetes education and prevention program. This request was not recommended for funding because application does not explain what percentage of overall need is attributable to impact of casino. The application adequately explains connection to Native American population, but not to an impact from the casino. Staff also noted the request to fund a diabetes educator would pay salary of \$75,000. Application does not explain what would happen to program after grant ends.
- iv. Tulare County Fire Department: Emergency radio pagers and emergency fire shelters. This request was not recommended for funding because the application does not explain what percentage of overall need is attributable to impact of the casino.
- v. Tulare County Resource Management Agency: Improve Mountain Road 137. This request is recommended for funding because the request adequately explained the impact the casino has on the condition of the road due to increased traffic.

Cameron Hamilton motioned to find that applicants are not required to provide a percentage of impacts from the casino because it was not information required in the grant application form, and to reject the recommendations of staff to not approve the grant applications from the City of Porterville, Sierra View Local Healthcare District and Tulare County Fire Department. The motion was seconded by Greg Shelton, and the motion was approved unanimously by the Committee.

- b. Indian Gaming Local Community Benefit Committee – Presentations by Grant Applicants
 - i. City of Porterville
 - ii. Kaweah Delta Healthcare District
 - iii. Sierra View Local Healthcare District
 - iv. Tulare County Fire Department
 - v. Tulare County Resource Management Agency

- c. Committee Discussion and Action: It was determined through discussion by committee members, that the funding be awarded in the following manner:
 - i. City of Porterville: \$104,000
 - ii. Kaweah Delta Healthcare District: \$30,000
 - iii. Sierra View Local Healthcare District: \$30,000
 - iv. Tulare County Fire Department: \$40,000
 - v. Tulare County Resource Management Agency: \$64,000

Mike Ennis motioned to approve awards and authorize committee Chairman to sign grant agreements, the motion was seconded by Robin Skiles, and the motion was approved unanimously by the Committee.

Joe Garcia stated that the Committee needs a legal interpretation from the State regarding application of the grant criteria and law. Robin Skiles motioned to direct staff to contact the California State Auditor to seek an opinion on whether the Committee properly applied the law to award the grant funds. Issues include: (1) whether "Indian lands" can include property that is owned in fee title by the Tribe, and that is not reservation or trust land, (2) whether the TREDICIP (including a warehouse and shuttle stop serving the Casino on the Reservation) qualifies as a "casino" pursuant to Gov. Code sec. 12715 (c)(1) (C) and (D), (3) whether Tulare County "borders the Indian lands on all sides", pursuant to Gov. Code sec. 12715(c)(1)(A) although BLM and Giant Sequoia National Monument land also border the Reservation, and (4) whether grant applicants are required to provide a percentage of impacts from the Casino and how the project mitigation will be proportionate to that percentage. The motion was seconded by Greg Shelton, and the motion was approved unanimously by the Committee.

6. Next meeting – 10 AM, August 2, 2012, Tribal Administration Building, Tulare River Indian Reservation, 340 N. Reservation Road, Porterville, CA 93258
7. Adjourn: Rhoda Hunter motioned to adjourn the Committee meeting at 12:25 PM, the motion was seconded by Cam Hamilton, and the motion was passed unanimously by the Committee.

**BEFORE THE TULARE COUNTY
INDIAN GAMING LOCAL COMMUNITY
BENEFIT COMMITTEE**

IN THE MATTER OF CONSIDERING)
THE MINUTES OF THE APRIL 5, 2012) RESOLUTION NO. _____
COMMITTEE MEETING)

UPON MOTION OF MEMBER _____, SECONDED BY MEMBER
_____, THE FOLLOWING WAS ADOPTED BY THE TULARE COUNTY
INDIAN GAMING LOCAL COMMUNITY BENEFIT COMMITTEE, AT AN OFFICIAL
MEETING HELD _____, BY THE FOLLOWING VOTE:

AYES:
NOES:
ABSTAIN:
ABSENT:

BY: _____
Chairman

* * * * *

Approved the Minutes for the April 5, 2012 Committee Meeting.



Tulare County Indian Gaming Local Community Benefit Committee **AGENDA ITEM**



AGENDA DATE: August 2, 2012

SUBJECT: Update on Indian Gaming Local Community Benefit Committee Membership

REQUEST(S):

That the Local Community Benefit Committee:
Receive update regarding the status of Tulare County Indian Gaming Local Community Benefit Committee (TCLCBC) membership.

SUMMARY:

Article II, Section 1 of the TCLCBC bylaws state the Committee shall be composed of seven (7) members consisting of the following: two (2) representatives from the County, appointed by the Board of Supervisors; three elected representatives from cities located within four miles of a tribal casino in the County, appointed by the Board of Supervisors or, if no such cities are located within four miles of a tribal casino in the County, then by mutual agreement of the County and a majority of tribes operating casinos in the County; and two (2) representatives selected upon the recommendation of a majority of the tribes paying into the Indian Gaming Special Distribution Fund in the County.

Article II, Section 2 of the TCLCBC bylaws state the Committee shall have three (3) alternates: one for each representative classification. The alternates shall not have voting privileges when the appointed members are present. The alternates shall consist of: one representative appointed by the Board of Supervisors; one representative selected by the Tule River Tribe; and, one representative jointly selected by the Board of Supervisors and the Tule River Tribe.

Article II, Section 3 of the TCLCBC bylaws state the terms of office for members and alternates shall be four (4) years expiring on June 30 of the appropriate years and subsequent new terms shall begin July 1 of that year. The terms shall be staggered so that no more than two thirds (2/3) of the terms of the total number of members of the Committee shall expire in any one (1) year period. A member or an alternate whose term of office has expired shall continue to serve in that capacity until a new appointment is made. Committee members appointed by the Board of Supervisors may be removed from the Committee at any time by a majority vote of the County Board of Supervisors. Committee members appointed by the Tule Tribe (the only Tribe currently paying into the Indian Gaming Special Distribution Fund in the County) may be removed from the Committee at any time by a majority vote of Tule River Tribal Council.

SUBJECT: Update on Indian Gaming Committee Membership
DATE: August 2, 2012

Article II, Section 5 of the TCLCBC bylaws state upon any vacancy within the Committee, appointment of the representative selected to fill the vacancy shall be in the same manner as that used in the original appointment of the departing Committee member. A resigning Committee member or alternate shall submit his/her original written resignation to the Committee Chairperson. The Chairperson is responsible for immediately notifying the County's Clerk of the Board of Supervisors of any unscheduled vacancies. The Chairperson will provide the County's Board of Supervisors and the appropriate appointing authority with written notification of vacancies. The County's Board of Supervisors or the appropriate appointing authority will take the necessary action to declare the position vacant and fill the position.

The absence of a Committee member from two (2) consecutive meetings of the Committee shall be cause for the Chairman of the Committee to contact the Committee member to discuss participation in the meetings. Whenever a Committee member fails to attend two (2) consecutive meetings or three (3) total meetings in a calendar year, without good cause entered into the minutes, the Committee Chairman shall correspond with the Chairman of the County Board of Supervisors or the appropriate appointing authority and recommend that the Committee member be removed from the Committee.

As of July 23, 2012, there are five (5) vacancies on the TCLCBC. (See Attachment A) The vacancies are: one County Representative – Alternate; one Tule Representative; two Mutually Selected Members; one Mutually Selected Member – Alternate.

The County Representative – Alternate position was previously held by County Administrative Analyst John Hess. The term for this position expired June 30, 2012. Mr. Hess will no longer serve as an alternate, as he has resigned from the Alternate position (See Attachment B) and has been appointed to serve as the backup staff member of the TCLCBC. Tulare County will seek to appoint a person to fill the Alternate position.

The Tule Representative position was previously held by Shannon Alto. The TCLCBC Chairperson Rhoda Hunter received notification from Mr. Alto via electronic mail (e-mail) that he will no longer serve as the Tule Representative on the TCLCBC. The Tule River Indian Tribe will seek to appoint a person to fill the Tule Representative position.

There are a total of three Mutually Selected Member positions on the TCLCBC. Tulare County Supervisor Mike Ennis holds a Mutually Selected position and his term ends on June 30, 2013. Porterville City Councilmember Cam Hamilton has served as a Mutually Selected Member. Mr. Hamilton's term expired June 30, 2012. The third Mutually Selected Member position has been vacant for more than a year. Regarding Mr. Hamilton's position, please note the bylaws state "*a member or an alternate whose term of office has expired shall continue to serve in that capacity*

SUBJECT: Update on Indian Gaming Committee Membership
DATE: August 2, 2012

until a new appointment is made.”

The Mutually Selected Member – Alternate position was previously held by Steve Tree. Mr. Tree’s term ended June 30, 2011 and has not attended a meeting for more than a year.

To address the vacancies, staff will work with the County Clerk of the Board to post notices of scheduled and unscheduled vacancies and solicit Committee applications through press releases, email notifications, and post to the County’s website.

FISCAL IMPACT/FINANCING:

N/A

Attachment(s)

A – 2012 TCLCBC Roster/Status July 23, 2012

B – Resignation Letter

2012 Indian Gaming Committee - Roster/Status (7/23/12)	Name	Appointed or Reappointed	Term Ends	Mailing Address	Phone Number	Notes
County Representative	Tulare County Fire Department Chief Joe Garcia	12/13/2011	6/30/2012	907 W. Visalia Rd. Farmersville, CA 93223	Work: 559/735-0314 Cell: 559/967-8486	Reappointment process under way.
County Representative	Tulare County Sheriff's Cpt. Robin Skiles	5/10/2011	6/30/2013	17952 Rd. 220 Porterville, CA 93257	Work: 559/733-6543	
County Representative - Alternate	Tulare County Administrative Analyst John Hess	2/7/2012	6/30/2012	2800 W. Burrel Ave. Visalia, CA 93291	Work: 559/636-5005	Term has ended. Will not serve as alternate. Assigned as Committee's backup staff. VACANT

Tule Representative	Rhoda Hunter					
Tule Representative	Vacant					
Tule Representative - Alternate	Greg Shelton					

Mutually Selected Member	Cameron Hamilton	5/12/2010	6/30/2012	1101 W. Olive Ave. Porterville, CA 93257		Term has ended. Must resubmit application to be reappointed. Has not resubmitted. VACANT.
Mutually Selected Member	Mike Ennis	1/27/2012	6/30/2013	2800 W. Burrel Ave. Visalia, CA 93291	Work: 559/636-5000	
Mutually Selected Member	Vacant					VACANT
Mutually Selected Member - Alternate	Steve Tree	3/3/2009	6/30/2011	187 W. Olive Ave. Porterville, CA 93257	Work: 559/784-1399 Ext. 1001	NO LONGER ON THE COMMITTEE. VACANT

July 25, 2012

Tulare County Indian Gaming Local Community Benefit Committee
c/o: Jed Chernabaeff, Administrative Analyst
2800 W. Burrel Ave.
Visalia, CA 93291

RE: Tulare County Indian Gaming Local Community Benefit Committee Alternate Appointment

Mr. Chernabaeff,

I hereby resign my appointment as an Alternate County Representative to the above-referenced Committee. I was appointed by the Board of Supervisors on February 7, 2012 and my term expired on June 30, 2012. The Bylaws state that "a member or an alternate whose term of office has expired shall continue to serve in that capacity until a new appointment is made." Therefore, this resignation removes me from membership of the Committee.

Sincerely,

A handwritten signature in blue ink, appearing to read "John L. Hess", with a long horizontal flourish extending to the right.

John L. Hess



Tulare County Indian Gaming Local Community Benefit Committee **AGENDA ITEM**



AGENDA DATE: August 2, 2012

SUBJECT: Legislative report on future Indian Gaming funding

REQUEST(S):

That the Local Community Benefit Committee:
Receive an update regarding the Legislative report on future Indian Gaming funding.

SUMMARY:

Funding allocated for the Tulare County Indian Gaming Local Community Benefit Committee (TCLCBC) to administer is mandated by Senate Bill 621, which makes grant funding available to counties, cities and special districts impacted by tribal gaming from the Indian Gaming Special Distribution Fund. Those gaming tribes who operated 200 or more gaming devices on or before September 1, 1999 contribute a variable portion of their net winnings into the Special Distribution Fund (SDF). In Tulare County, the Tule River Tribe contributes winnings.

Existing law created the Special Distribution Fund (SDF) in the State Treasury for the receipt of revenue contributions made by tribal governments pursuant to the terms of the 1999 model Tribal-State Gaming Compacts and authorizes the Legislature to appropriate money from the SDF for the following purposes:

- a.) grants for programs designed to address gambling addiction;
- b.) grants for the support of state and local government agencies impacted by tribal government gaming;
- c.) compensation for regulatory costs incurred by the CGCC and the Department of Justice (DOJ) in connection with the implementation and administration of compacts;
- d.) payment of shortfalls that may occur in the Indian Gaming Revenue Sharing Trust Fund (RSTF);
- e.) disbursements for the purpose of implementing the terms of tribal labor relations ordinances promulgated in accordance with the terms of the 1999 compacts; and
- f.) any other purpose specified by law.

Last year, the State Legislature appropriated \$9.1 million in SDF funds for Fiscal Year 2011-12 through Assembly Bill 1417.

TCLCBC staff has traditionally worked with California State Association of Counties (CSAC) legislative staff to determine if the Legislature would appropriate funding.

SUBJECT: Legislative report on future Indian Gaming funding

DATE: August 2, 2012

TCLCBC staff contacted CSAC staff on July 18, 2012 to see if funding would be available for Fiscal Year 2012-13.

CSAC legislative staff reported that the State Budget did not include an SDF appropriation for Fiscal Year 2012-13. In addition, no legislation to make an SDF appropriation has been introduced or amended to date (July 18, 2012) either.

The vehicle for funding appropriations change from year to year. Either the Governor will include an appropriation in the budget bill, the Legislature will include it in a budget trailer bill, or a legislator can introduce a stand-alone piece of legislation. If each of these fail to happen no funding will be appropriated.

FISCAL IMPACT/FINANCING:

Per the most recent reports, there will not be any funding available to administer in the next Fiscal Year.

Attachment(s) N/A



**Tulare County Indian Gaming
Local Community
Benefit Committee
AGENDA ITEM**



AGENDA DATE: August 2, 2012

SUBJECT: Review of 2012 Grant Projects

REQUEST(S):

That the Local Community Benefit Committee:
Receive updates from 2012 grant recipients regarding expenditures and plans of appropriated funding.

SUMMARY:

On April 5, 2012, the Tulare County Indian Gaming Local Community Benefit Committee (TCLCBC) approved five grants in the amount of \$268,000 to the following entities: City of Porterville, \$104,000; County of Tulare – Fire Department, \$40,000; County of Tulare – Resource Management Agency, \$64,000; Kaweah Delta Healthcare District, \$30,000; Sierra View District Hospital, \$30,000.

It has been tradition of the TCLCBC to receive an update from the grant recipients at its August meeting. The update includes the following information: how much funding has the grant recipient used; what has the funding been spent on; and how the recipient plans to utilize the remaining funding.

FISCAL IMPACT/FINANCING:

N/A

Attachment(s) N/A



Tulare County Indian Gaming Local Community Benefit Committee **AGENDA ITEM**



AGENDA DATE: August 2, 2012

SUBJECT: Report on response from California State Auditor

REQUEST(S):

That the Local Community Benefit Committee:

1. Receive an update regarding response from California State Auditor.
2. Provide direction to staff regarding future legal interpretation efforts.

SUMMARY:

On April 5, 2012, the Tulare County Indian Gaming Local Community Benefit Committee (TCLCBC) approved five grants in the amount of \$268,000 to the following entities: City of Porterville, \$104,000; County of Tulare – Fire Department, \$40,000; County of Tulare – Resource Management Agency, \$64,000; Kaweah Delta Healthcare District, \$30,000; Sierra View District Hospital, \$30,000.

After grant allocation approval, the TCLCBC directed staff to seek a legal interpretation from the California State Auditor regarding the following items:

- (1) whether “Indian lands” can include property that is owned in fee title by the Tribe, and that is not reservation or trust land; and
- (2) whether the Tulare River Economic Development Corporation Industrial Park (TREDICIP) (including a warehouse and shuttle stop serving the Casino on the Reservation) qualifies as a “casino” pursuant to Gov. Code sec. 12715 (c)(1) (C) and (D); and
- (3) whether Tulare County “borders the Indian lands on all sides”, pursuant to Gov. Code sec. 12715(c)(1)(A) although BLM and Giant Sequoia National Monument land also border the Reservation; and
- (4) whether grant applicants are required to provide a percentage of impacts from the Casino and how the project mitigation will be proportionate to that percentage.

Staff sent a letter to the California State Auditor’s Office on June 5, 2012 outlining the TCLCBC’s concerns. (See Attachment A.)

Staff received a response from the California State Auditor’s Office in July 2012. (See Attachment B)

SUBJECT: Legislative report on future Indian Gaming funding
DATE: August 2, 2012

The California State Auditor's Office stated:

- Their office does not provide prospective advice on programs that may be subject to audit by their office at some future time.
- They recommend that the TCLCBC review their Office's previous audits.
- Because TCLCBC's request is primarily a request for legal advice, TCLCBC may wish to request one of its representatives in the California State Legislature to submit a request for legal advice from the California Office of Legislative Counsel.

Staff has included the California State Auditor's Office February 2011 report, "Indian Gaming Special Distribution Fund." (Attachment C)

Staff would ask the TCLCBC to provide direction in terms of any future efforts to seek legal interpretation.

FISCAL IMPACT/FINANCING:

N/A

Attachment(s)

A – June 5, 2012 letter sent by TCLCBC staff

B – July 16, 2012 letter received by staff from California State Auditor's Office

C – California State Auditor's Office Report on Indian Gaming Special Distribution Fund

**BEFORE THE TULARE COUNTY
INDIAN GAMING LOCAL COMMUNITY
BENEFIT COMMITTEE**

IN THE MATTER OF CONSIDERING)
A RESPONSE FROM CALIFORNIA) RESOLUTION NO. _____
STATE AUDITOR)

UPON MOTION OF MEMBER _____, SECONDED BY MEMBER
_____, THE FOLLOWING WAS ADOPTED BY THE TULARE COUNTY
INDIAN GAMING LOCAL COMMUNITY BENEFIT COMMITTEE, AT AN OFFICIAL
MEETING HELD _____, BY THE FOLLOWING VOTE:

AYES:
NOES:
ABSTAIN:
ABSENT:

BY: _____
Chairman

* * * * *

1. Received an update regarding response from California State Auditor.
2. Provided direction to staff regarding future legal interpretation efforts.



County of Tulare

BOARD OF SUPERVISORS

Allen R. Ishida
District One

Pete Vander Poel
District Two

Phillip A. Cox
District Three

J. Steven Worthley
District Four

Mike Ennis
District Five

*

BOARD STAFF

Jed Chernabaeff

Helen Herrera

Allison Pierce

*

CLERK OF THE BOARD

Michelle Baldwin
Chief Clerk

*

Administration Bldg.
2800 West Burrel
Visalia, CA 93291

TEL: (559) 636-5000
FAX: (559) 733-6898

June 5, 2012

Elaine M. Howle
California State Auditor
555 Capitol Mall, Suite 300
Sacramento, CA 95814

Re: SB 621 Tulare County Local Community Benefit Committee. Grants of Indian Gaming Revenue to Local Government Agencies. California Government Code §§ 12710, et. seq. Our File No. 2004486.

Dear Ms. Howle:

The Tulare County Local Community Benefit Committee (TCLCBC) requests a California State Auditor opinion on whether our grants distribution requirements were determined appropriately. The following are issues considered at the TCLCBC's April 5, 2012 meeting to distribute grants:

1. California Government Code § 12715 (c) states that sixty percent (60%) of all grant monies in the County Tribal Casino Account are awarded to city and county applicants by applying geographical proximity criteria. The geographical proximity criteria ("nexus test") are based on how much of the individual Indian land, on which the tribal casino is located, is touched or surrounded by the local government jurisdiction. On April 5, 2012, TCLCBC awarded the City of Porterville grant monies from the 60% fund due to a warehouse and shuttle stop located on property located within the City of Porterville, which the Tule River Indian Tribe ("Tribe") owns in fee title (the Tule River Economic Development Corporation Industrial Park (TREDICIP)). The TREDICIP is located about 9 miles from the Tribe's Eagle Mountain Casino ("Casino"). The Casino is located on the Tule River Indian Reservation ("Reservation") near Springville, within County boundaries. The question is whether "Indian lands" can include property that is owned in fee title by the Tribe, and that is not reservation, federal trust or restricted alienation land pursuant to 25 U.S.C. §2703(4) and 25 C.F.R. § 502.12 (Cheyenne River Sioux Tribe v. State of S.D. (1993) 3 F.3d 273).

2. Further, does a warehouse and shuttle stop (part of TREDICIP) located approximately 9 miles from the Reservation, that serves the Casino on the Reservation, qualify as a "casino" pursuant to Gov. Code §12715(c)(1) (C) and (D)?

3. Another question is whether Tulare County “borders the Indian lands on all sides” pursuant to Gov. Code §12715(c)(1)(A). Tulare County’s boundaries are set forth in Gov. Code §23154 and include the Reservation, however also includes Bureau of Land Management and Giant Sequoia National Monument jurisdiction that borders the Reservation. Does this preclude Tulare County from bordering the Indian lands (Reservation) on all sides?

4. Lastly, is the TCLCBC required to only grant monies from the County Tribal Casino Account to grant applications that provide a percentage of impacts from the Casino, or any casino, and how the mitigation will be proportionate to that percentage? Are there other ways to “quantify” the impacts from the Casino or any casino, as required in State Auditor Report 2010-036 dated February 15, 2011?

Your timely response would be greatly appreciated to ensure we are in accordance with all legal requirements. Thank you and please feel free to contact us at (559) 636-5000 for further information.

Very truly yours,



Allison Guthrie Pierce
Staff, Tulare County Local Community Benefit Committee



Jed Chernabaeff
Staff, Tulare County Local Community Benefit Committee

Cc Doug Cordiner, Chief Deputy State Auditor
Tulare County Local Community Benefit Committee

Elaine M. Howle
State Auditor

Doug Cordiner
Chief Deputy

CALIFORNIA STATE AUDITOR

Bureau of State Audits

555 Capitol Mall, Suite 300

Sacramento, CA 95814

916.445.0255

916.327.0019 fax

www.bsa.ca.gov

July 16, 2012

Allison Pierce
Tulare County Local Community Benefit Committee
Administration Building
2800 West Burrel Avenue
Visalia, California 93291

Dear Ms. Pierce:

I am writing in response to your June 5, 2012 letter in which you requested a legal opinion from the California State Auditor on whether the grant distribution requirements determined by the Tulare County Local Community Benefit Committee (TCLCBC) for distribution of grant moneys in the Country Tribal Casino Account are appropriate.

As we discussed on the telephone, consistent with the statutes and government audit standards we operate under, the California State Auditor does not provide prospective advice on programs that may be subject to audit by our office at some future time. As you know, under Senate Bill 621 of the 2003-04 Regular Session (SB 621), which was chaptered into Section 12717 of the Government Code, our office is required to conduct an audit every three years regarding the allocation and uses of moneys from the distribution fund by the recipients of the grant money and report its findings to the Legislature and all other appropriate entities. While we do not provide prospective legal advice to public entities about their compliance with state law SB 621, we do recommend that entities such as the TCLCBC review our prior audit work in the subject matter. TCLCBC may find that our review of other public entities charged with implementing SB 621 helpful to decisions by the TCLCBC relative to that program. For your convenience, we have included copies of our prior audit reports relating to SB 621.

As an additional alternative, because TCLCBC's request is primarily a request for legal advice, TCLCBC may wish to request one of its representatives in the California State Legislature to submit a request for legal advice from the California Office of Legislative Counsel.

If you have any further questions, please contact me at (916) 445-0255.

Sincerely,



SHARON REILLY
Chief Legal Counsel

Enclosure



Tulare County Indian Gaming Local Community Benefit Committee **AGENDA ITEM**



AGENDA DATE: August 2, 2012

SUBJECT: Direction to Staff regarding Committee Counsel

REQUEST(S):

That the Local Community Benefit Committee:
Provide direction to staff regarding Committee Legal Representation.

SUMMARY:

Article II, Section 9 of the Tulare County Indian Gaming Local Community Benefit Committee (TCLCBC) Bylaws states: "staff from the County of Tulare Chief Administrative Office and County Counsel shall serve as administrative staff and legal advisor to the Committee. County staff shall be reimbursed for demonstrated County administrative and legal costs from the aggregate tribal account pursuant to Section 12715(b)(1)(C) of the Government Code."

On June 4, 2012, Tulare County Counsel withdrew their legal representation on behalf of the TCLCBC, citing "Rule of Professional Conduct, Rule 3-600." Currently, the TCLCBC Bylaws do not stipulate the method by which alternative legal representation is to be sought in the event that County Counsel is no longer fulfilling its role as legal advisor to the TCLCBC.

Therefore, Staff is requesting that the Committee provide direction as to the recommended method for identifying alternative legal representation. The Committee may direct Staff to amend the Bylaws to allow for the procurement of private, independent legal representation. To identify other possible alternatives, Staff submitted an inquiry to the California State Association of Counties (CSAC) regarding what alternatives other Local Community Benefit Committees utilize in the event that County Counsel is not used as legal representation. CSAC staff sent a survey to other Counties. Responses include:

- Butte County: Utilizes County Counsel.
- Kings County: Utilizes County Counsel.

Staff also contacted a Local Community Benefit Committee staff member from Fresno County. Fresno County also utilizes its County Counsel. None of the Counties surveyed indicated a need to seek alternative legal representation.

Based on the County's records, over the past four years, County Counsel has spent an average of 46 hours per fiscal year providing legal representation for the TCLCBC. (See attachment). Government Code 12715 (b)(1)(C) states that the

SUBJECT: Direction to Staff regarding Committee Counsel
DATE: August 2, 2012

appropriate amount for reimbursement from the aggregate County Tribal Account for the demonstrated costs incurred by the County for administering the grant programs may not exceed two percent of the aggregate account allocation in any given fiscal year. This two percent has provided funding for legal representation and administrative support for the Committee.

It is projected that County Counsel's annual average costs are near or above \$10,000. (See attachment) However, in Fiscal Year 2011-12, the Committee approved \$5,473 for Tulare County administrative and legal costs. Therefore, an annual deficit exists of greater than \$5,000 for legal representation and administrative support. This shortage has been covered by the County in the past.

FISCAL IMPACT/FINANCING:

Two percent of the aggregate Tribal Account appropriation is allocated for administrative and legal services. If costs for administrative and legal services exceed this two percent amount, the Committee would need to identify a funding source to cover this excess.

Attachment(s)

A – Spreadsheet totaling hours provided by Tulare County Counsel for TCLCBC services.

**BEFORE THE TULARE COUNTY
INDIAN GAMING LOCAL COMMUNITY
BENEFIT COMMITTEE**

IN THE MATTER OF PROVIDING)
DIRECTION TO STAFF REGARDING) RESOLUTION NO. _____
COMMITTEE COUNSEL)

UPON MOTION OF MEMBER _____, SECONDED BY MEMBER
_____, THE FOLLOWING WAS ADOPTED BY THE TULARE COUNTY
INDIAN GAMING LOCAL COMMUNITY BENEFIT COMMITTEE, AT AN OFFICIAL
MEETING HELD _____, BY THE FOLLOWING VOTE:

AYES:
NOES:
ABSTAIN:
ABSENT:

BY: _____
Chairman

* * * * *

Provided direction to staff regarding Committee Legal Representation.

Fiscal Year	Class	Total
FY09	ATTNY	8.40
FY09	ATTNY	0.50
FY09	ATTNY	0.20
FY09	ATTNY	20.30
FY10	ATTNY	9.70
FY11	ATTNY	11.40
FY11	ADMIN	1.20
FY11	ATTNY	0.50
FY11	PARALEGAL	2.70
FY11	ATTNY	29.50
FY12	ATTNY	22.80
FY12	ADMIN	0.50
FY12	ATTNY	2.20
FY12	ATTNY	2.30
FY12	PARALEGAL	0.10
FY12	ATTNY	72.20
GRAND TOTAL		184.50
Average Hours:		46.13



Tulare County Indian Gaming Local Community Benefit Committee **AGENDA ITEM**



AGENDA DATE: August 2, 2012

SUBJECT: Discussion of Committee Bylaws

REQUEST(S):

That the Local Community Benefit Committee:
Provide direction to staff regarding Committee Bylaws

SUMMARY:

Article VIII, Section 7 of the Tulare County Indian Gaming Local Community Benefit Committee states "Bylaws shall be reviewed every three (3) years."

Staff has researched records and found that the bylaws have not been revised since September 1, 2005.

Per the request of the Chairperson at the April 5, 2012 meeting, this item is brought forward for Committee Discussion.

Please note, Article VII of the bylaws state:

SECTION 1: Adoption of Bylaws

The proposed Bylaws shall be circulated to the Committee, in writing, at least five (5) days in advance of the meeting at which a vote may be called.

SECTION 2: Required Vote for Adoption

The Bylaws of the Committee shall be adopted if approved by a majority of the voting Committee members.

SECTION 3: Proposed Amendments

Proposed Bylaw amendments shall be circulated to the Committee, in writing, at least thirty (30) days in advance of the meeting at which a vote may be called.

SECTION 4: Required Vote for Adoption of Amendments

The Bylaws of the Committee may be amended if approved by a majority of the voting Committee members.

SUBJECT: Discussion of Committee Bylaws

DATE: August 2, 2012

FISCAL IMPACT/FINANCING:

N/A

Attachment(s)

A – Tulare County Indian Gaming Local Community Benefit Committee Bylaws

BYLAWS OF
THE TULARE COUNTY
INDIAN GAMING LOCAL COMMUNITY
BENEFIT COMMITTEE
April 23, 2004¹

**ARTICLE I
AUTHORIZATION**

SECTION 1: Jurisdiction

The Tulare County Indian Gaming Local Community Benefit Committee (“Committee”) serves the geographic area of the County of Tulare (“County”). Within such geographic area currently exists one tribal casino, called Eagle Mountain Casino, owned and operated by the Tule River Indian Tribe (“Tribe”).

SECTION 2: Purpose

The Committee is established pursuant to Paragraph (1) of subsection (b) of Section 12715 of the California Government Code. It is the responsibility of the Committee to facilitate the distribution of appropriations from the Indian Gaming Distribution Fund by selecting those grants from each County Tribal Casino Account that will be applied toward the support of local government agencies within the County impacted by tribal gaming.

SECTION 3: Authority

The Committee is formed pursuant to Chapter 7.5 (commencing with Section 12710) of Part 2 of Division 3 of Title 2 of the California Government Code). Any conflict between these Bylaws and such sections of Chapter 7.5 shall be resolved in favor of the Government Code.

SECTION 4: Duration

Government Code Section 12718 provides that the authority for this Committee (and the Committee’s existence) shall remain in effect only until January 1, 2009, and as of that date, the Committee and its authority are dissolved, unless a later enacted state statute that is enacted before January 1, 2009, deletes or extends that date.

¹ Revised 9-1-05.

**ARTICLE II
MEMBERSHIP**

SECTION 1: Appointment and Representation of Members

The Committee shall be composed of seven (7) members consisting of the following:

- a. Two (2) representatives from the County, appointed by the County Board of Supervisors;
- b. Three (3) elected representatives from cities located within four (4) miles of a tribal casino in the County, appointed by the County Board of Supervisors or, if no such cities are located within four (4) miles of a tribal casino in the County, then by mutual agreement of the County and a majority of tribes operating casinos in the county; and
- c. Two (2) representatives selected upon the recommendation of a majority of the tribes paying into the Indian Gaming Special Distribution Fund in the County.

SECTION 2: Appointment and Representation of Alternates

The Committee shall have **three (3) alternates: one for each representative classification.** The alternates shall not have voting privileges when the appointed members are present. The alternates shall consist of: **one representative appointed by the Board of Supervisors; one representative selected by the Tule River Tribe; and, one representative jointly selected by the Board of Supervisors and the Tule River Tribe.**

SECTION 3: Term of Office

Terms of office for members and alternates shall be four (4) years expiring on June 30 of the appropriate years and subsequent new terms shall begin July 1 of that year. The terms shall be staggered so that no more than two thirds (2/3) of the terms of the total number of members of the Committee shall expire in any one (1) year period. A member or an alternate whose term of office has expired shall continue to serve in that capacity until a new appointment is made. Committee members appointed by the Board of Supervisors may be removed from the Committee at any time by a majority vote of the County Board of Supervisors. Committee members appointed by the Tule Tribe (the only Tribe currently paying into the Indian Gaming Special Distribution Fund in the County) may be removed from the Committee at any time by a majority vote of Tule River Tribal Council.

SECTION 4: Election of Chairperson, Vice-Chairperson

A Chairperson and Vice-Chairperson shall be elected annually from the voting

members of the Committee at the first meeting of each calendar year by a simple majority of the committee members present. The Vice-Chairperson shall assume the responsibilities of the Chairperson in his/her absence. Either the Chairperson or the Vice-Chairperson shall attend each meeting of the Committee.

SECTION 5: Committee Vacancies

Upon any vacancy within the Committee, appointment of the representative selected to fill the vacancy shall be in the same manner as that used in the original appointment of the departing Committee member. A resigning Committee member or alternate shall submit his/her original written resignation to the Committee Chairperson. The Chairperson is responsible for immediately notifying the County's Clerk of the Board of Supervisors of any unscheduled vacancies. The Chairperson will provide the County's Board of Supervisors and the appropriate appointing authority with written notification of vacancies. The County's Board of Supervisors or the appropriate appointing authority will take the necessary action to declare the position vacant and fill the position.

The absence of a Committee member from two (2) consecutive meetings of the Committee shall be cause for the Chairman of the Committee to contact the Committee member to discuss participation in the meetings. Whenever a Committee member fails to attend two (2) consecutive meetings or three (3) total meetings in a calendar year, without good cause entered into the minutes, the Committee Chairman shall correspond with the Chairman of the County Board of Supervisors or the appropriate appointing authority and recommend that the Committee member be removed from the Committee.

SECTION 6: Quorum

A quorum shall consist of a minimum of four (4) Committee members. Any action of the Committee shall require affirmative votes of not less than a quorum, except less than a quorum may adjourn a meeting to a specified time and place.

SECTION 7: Voting

Each Committee member shall have one (1) vote. Committee members shall not have the right to accumulate votes. A matter may only be passed by the affirmative vote of a majority of the members present. In cases where only a quorum is present, all members must vote in the affirmative to take action on the item.

SECTION 8: Official Action

All official action of the Committee shall be by resolution.

SECTION 9: Committee Staff

Staff from the County of Tulare Chief Administrative Office and County Counsel shall serve as administrative staff and legal advisor to the Committee. County staff shall be

reimbursed for demonstrated County administrative and legal costs from the aggregate tribal account pursuant to Section 12715(b)(1)(C) of the Government Code.

ARTICLE III MEETINGS

SECTION 1: Regular Meetings

The Committee shall meet at least twice each year to consider grant opportunities and to award selected grants. The Committee may meet more frequently than twice each year if necessary to conduct its business.

SECTION 2: Special Meetings

Special meetings may be called at the discretion of the Chairperson or at the request of a majority of the members. Committee members must be given at least ten (10) working days advance notice, in writing, of all special meetings.

SECTION 3: Meeting Announcements

Pursuant to the Brown Act, all meetings of the Committee shall be open to the public and notices of the meeting posted in a location fully accessible to the public seventy-two (72) hours before the meeting. Nothing herein shall subject the Tribe or any of its officers, affiliates, members, employees or agents to the Brown Act other than when acting in their capacity as members or staff of this Committee.

SECTION 4: Meeting Agendas

Meeting agendas, for all scheduled Committee meetings, shall be transmitted in advance, in writing, to all Committee members and other interested persons who have submitted a request in writing. Proposed agenda items shall be submitted, in writing, to the administrative staff no later than five (5) days prior to a scheduled meeting. Agendas will be prepared by County staff, in cooperation with the Chairperson. Where appropriate and feasible, written backup information material should be submitted concurrently with the proposed agenda items for advance distribution to Committee members. There shall be a notation on the agenda for public comments. Agendas should be mailed to Committee members one (1) week prior to the next scheduled meeting.

SECTION 5: Meeting Commencement

All Committee meetings will begin at precisely the time stated on the agenda. If there is no quorum at the designated starting time of the meeting, the meeting will not be conducted.

SECTION 6: Rules of Order and Brown Act

All meetings will be **conducted in accordance with the Rules of Procedure**

adopted by the Tulare County Board of Supervisors. All meetings of the Committee shall be subject to the Brown Act (California Government Code section 54950 et seq.).

SECTION 7: Review of Bylaws

Bylaws shall be reviewed every three (3) years.

**ARTICLE IV
SUBCOMMITTEES**

SECTION 1: Establishment and Appointment

Subcommittees may be established and appointed by the Chairperson. The Chairperson, with the concurrence of the Committee, shall appoint the members and the chair of the Subcommittees. Regular and alternate Committee members may be appointed to the Subcommittees. Only appointed members of the Committee shall be allowed to vote on a decision to be presented to the Committee at large.

SECTION 2: Assignments

The Chairperson will define, in precise terms, the assignment to be completed, providing a definitive time frame for reporting to the Committee. The Subcommittee will be dissolved once the assignment is completed and a report is submitted for consideration to the Committee.

**ARTICLE V
COMMITTEE RESPONSIBILITIES**

SECTION 1: Responsibilities

The Committee shall perform the duties as stated in the Government Code, Section 12710 et. seq. as follows:

- a. Select all grants for funding from the Individual Tribal Casino Account or County Tribal Casino Account.
- b. Ensure that the following uses shall be the priorities for the receipt of grant money from the Individual Tribal Casino Account: law enforcement; fire services; emergency medical services; environmental impacts; water supplies; waste disposal; behavioral; health; planning and adjacent land uses; public health; roads, recreation and youth programs, and child care programs.
- c. Grants awarded through this Committee shall be limited to addressing service-oriented impacts and providing assistance with one-time large capital projects related to Indian gaming impacts.

- d. Establish all application policies and procedures for grants from the Individual Casino Account or County Tribal Casino Account.
- e. Assess the eligibility of applications for grants from local jurisdictions impacted by tribal gaming operations.
- f. Determine the appropriate amount for reimbursement, from the aggregate County tribal account, of the demonstrated costs incurred by the County for administering the grant programs.
- g. Submit to the State Controller a list of approved projects for funding from Individual Tribal Casino Accounts.
- h. Prepare and submit an annual report to the County Board of Supervisors each year detailing the specific projects funded by all grants from the Indian Gaming Special Distribution Fund.

SECTION 2: Additional duties and responsibilities

The Committee shall perform additional duties and responsibilities as specified in County Code and/or state laws.

**ARTICLE VI
STANDARDS OF ETHICS AND CONDUCT**

SECTION 1: Responsibilities of Public Office

Individuals appointed to the Committee are agents of the public and serve for the benefit of the public. They shall uphold and act in accordance with the Constitution of the United States of America, and the Constitution of the State of California.

SECTION 2: Conflict of Interest Forms

All members of the Committee shall be required to complete the Conflict of Interest forms, entitled "Statement of Economic Interests for Designated Officials and Employees", Form 700 of the Fair Political Practices Commission (FPPC).

**ARTICLE VII
AMENDMENT TO BYLAWS**

SECTION 1: Adoption of Bylaws

The proposed Bylaws shall be circulated to the Committee, in writing, at least five

(5) days in advance of the meeting at which a vote may be called.

SECTION 2: Required Vote for Adoption

The Bylaws of the Committee shall be adopted if approved by a majority of the voting Committee members.

SECTION 3: Proposed Amendments

Proposed Bylaw amendments shall be circulated to the Committee, in writing, at least thirty (30) days in advance of the meeting at which a vote may be called.

SECTION 4: Required Vote for Adoption of Amendments

The Bylaws of the Committee may be amended if approved by a majority of the voting Committee members.

**ARTICLE VIII
SEVERABILITY AND INVALIDITY**

If any provision of these Bylaws, or any Amendment thereto is found to be invalid, void or unenforceable by any court of competent jurisdiction, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way, and shall be in effect only to the extent that it is in contravention of applicable laws without invalidating the remaining provisions.