

MEMORANDUM

DATE: February 15, 2010
TO: All Members of the Arizona House of Representatives
FROM: Scot Butler III, Gila River Indian Community
RE: Position Statement of the Gila River Indian Community on HB 2297

The Gila River Indian Community is in favor of House Bill 2297, and is pleased to provide all members of the Arizona House of Representatives with the attached Position Statement.

Key points regarding this bill are:

1. The bill is a direct result of the attempt by the Tohono O'odham Nation to locate a major casino in the heart of the Phoenix metropolitan area. The City of Glendale, which is the local government entity most directly affected, has reacted in the same way that any governmental entity, including tribal governments, would when someone tries to ram a project through with no consultation or cooperation.
2. The Tohono O'odham Nation has neither an aboriginal claim, nor historic or cultural ties, to the area where it is seeking to place a major casino. Its actions are an abuse of tribal government authority and responsibility, and inconsistent with the understandings among tribes in Arizona.
3. House Bill 2297 is not an attack on tribal sovereignty, but a response to an abuse of the principles that govern tribal government gaming under both federal and state law. Tribal governments are subject to both the federal Indian Gaming Regulatory Act and the state gaming compacts. IGRA provisions do not generally permit tribes to simply acquire any land they want for gaming purposes, and when such acquisitions are permitted, full consultation with affected governments and concurrence by the Governor are required. The Tohono O'odham Nation seeks to circumvent these basic protections and responsibilities designed to regulate any expansion of tribal government gaming.
4. The attempt by the Tohono O'odham Nation to locate a major casino in the metro Phoenix area threatens the delicate balances built into the Arizona State-Tribal gaming compacts, and directly contradicts the commitment to voters by both the state and tribal governments not to expand the number of casinos in metro Phoenix beyond the number permitted on the established reservations when Proposition 202 was passed in 2002.

The Community appreciates your consideration of House Bill 2297. Thank you.

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GILA RIVER INDIAN COMMUNITY

Executive Office of the Governor & Lieutenant Governor

William R. Rhodes
Governor



Joseph Manuel
Lieutenant Governor

February 11, 2010

The Gila River Indian Community has prepared this Position Statement on the proposal by the Tohono O'odham Nation for a major casino in Glendale, and the bill addressing that proposal, House Bill 2297.

At the outset, the Community wants to be very clear that it has developed this Position Statement and is supporting HB 2297 because the Tohono O'odham Nation is attempting to establish a huge casino within the Phoenix metropolitan area that threatens the viability of tribal gaming in Arizona and threatens all Arizona tribes.

House Bill 2297. The bill is short and to the point. It provides that if the owner of unincorporated territory in a "county island" seeks to either have the federal government acquire the land outright or acquire the land in trust, then the city which surrounds the territory on at least three sides, may annex the land. Contrary to the claims made by the Tohono O'odham Nation, HB 2297 does not break any promise to the Nation, it will not damage the Nation, it will not violate any property rights, and it will not establish any harmful precedent. It is a simple fact that whether or not a parcel of land has been annexed does not affect whether the United States can acquire the land. There are many examples of the United States acquiring land within city limits for various federal purposes, including to create or to add to an Indian reservation. HB 2297 will have no effect on ordinary land transactions with the United States on behalf of tribes or for other federal purposes. HB 2297 will only affect federal land acquisitions that are restricted to land outside of a city's limits.

HB 2297 is necessary because of the manner in which the Tohono O'odham Nation has approached its casino proposal, especially its failure to engage in prior discussions with affected local and tribal governments. HB 2297 is necessary because the Tohono O'odham Nation claims that neither the State of Arizona nor any other governmental entity will be considered in its decision to create an Indian reservation in the heart of metropolitan Phoenix so that it can open a major tribal casino. The City of Glendale is reacting in a completely understandable way to oppose a casino the City does not want. Many tribal governments, including the Community, have had similar experiences, when someone purchases a parcel of land within reservation boundaries and then tries to develop a project that is totally contrary to the land use plans of the tribe. In such cases, tribes react just like Glendale has reacted and fight as hard as they can to protect their vital interests.

The Community's support for House Bill 2297 is dictated by Community Council Resolutions and its view that the Glendale Casino proposal violates important principles which all tribal governments should support. These include: respect for the aboriginal territory and historical and cultural heritage of other tribes; respect for the integrity of the gaming compacts between the State and tribal governments and the promises that were made to the public when those compacts were approved in 2002; recognition that tribal governments and local governments need to act as good neighbors, with responsibility for communication going in both directions; and understanding that the economic benefit of tribal government gaming is a very delicate balance, where no one tribe is entitled to enrich itself at the expense of many others.

The Casino Proposal. HB 2297 is a direct response to the Glendale Casino proposal. An understanding of the background for that proposal undermines the cry of unfairness made by the Tohono O'odham Nation. In 1986, the United States Congress authorized the payment of \$30 million to the Tohono O'odham Nation for the loss of about 10,000 acres of reservation land near Gila Bend, due to construction of Painted Rock Dam. That legislation (the "1986 Act") also allowed the Tohono O'odham Nation to purchase private replacement lands not to exceed 9,880 acres, to be held in trust by the Secretary of Interior, provided that the replacement lands were in Maricopa, Pinal or Pima counties and were outside of the corporate limits of any city or town. This Congressional action was a response to a 1981 Petition by the Tohono O'odham Nation for new reservation land suitable for agricultural development (emphasis added). The 1986 Act required that the 9,880 acres could be divided into no more than three parcels. Congress intended that the Tohono O'odham Nation would purchase large parcels outside of any city or town.

The 1986 Act was adopted before Congress enacted the Indian Regulatory Gaming Act in 1988. The 1986 Act never contemplated either (1) that the Tohono O'odham Nation would purchase land commonly referred to as a "county island", surrounded by one or more municipalities, or (2) that the replacement lands could be used for casino gaming. With respect to the particular parcel of land chosen for the Glendale Casino proposal, the parcel is within the exterior boundaries of the City of Glendale and therefore does not qualify as replacement land under the 1986 Act in any event.

In addition, IGRA generally prohibits the placement of a tribal casino on lands acquired after October 17, 1988. IGRA does allow a tribe to open a casino on post-1988 lands if the Secretary of Interior, after consultation with the tribe and appropriate state and local officials, including officials of other nearby tribes, determines that a gaming establishment would be in the best interests of the tribe and not detrimental to the surrounding community, but only if the Governor of the State concurs (emphasis added). Obviously, the Tohono O'odham Nation proposal does not qualify under this provision of IGRA. In fact, the Tohono O'odham Nation has done everything possible to contradict the policies expressed in this provision of IGRA, including purchasing the land through a Delaware corporation in order to hide the tribe's role, keeping the purchase concealed from all state, local and other tribal governments for more than 5 years, and then in January 2009 telling all governmental entities that they had no right to even comment on the trust application filed with the U.S. Department of Interior. In fact, the Tohono O'odham Nation claims that it is permitted to place a casino on the Glendale parcel no matter who opposes the plan because this is land taken into trust as part of a settlement of a land claim.

The exception for settlement of a land claim is simply not applicable here because land claims must involve an illegal taking of land, and the lands taken at Gila Bend were taken in accordance with federal law. The dispute settled in the Gila Bend act was not over the taking, but over the amount of payment that the Tohono O'odham Nation should have received for that lawful taking. The Tohono O'odham Nation's theory is certainly open to serious questions and its claims will not go unchallenged. The Nation's strident claims of unfairness are in fact designed to cover up the weakness of their legal position and the lack of respect they have shown for the very legitimate concerns of Glendale, the Governor, and other tribes.