



An Understanding

The Memorandum of Understanding between Placer County and Thunder Valley has become a state model

by Dana Magliari

Editor's note: This is the first in a series of articles that Comstock's Business will feature in the coming months concerning the economic impact Indian casinos are having on the region.

When a patron of Thunder Valley Casino suffered what Greg Guyan, battalion chief for the Placer County Fire Department, called a "cardiac event," help arrived within 60 seconds. Because Thunder Valley

PHOTO: JAYSON CARPENTER

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lies in unincorporated territory, Placer County was, in theory, responsible for dispatching an ambulance from Lincoln, ten minutes away. Instead, the call for help went to Sunset Fire Station 77, conveniently located in the casino's parking lot and financed by the casino's owner, the United Auburn Indian Community.

The 911 call may be the most dramatic example to date of how the Memorandum of Understanding (MOU) that governs relations between Placer County and the United Auburn Indian Community affects those who fall under its jurisdiction. The MOU quantifies how much the tribe must pay for increased demands on county services that arise from the business their casino generates. That translates to nearly \$1 million per year to staff Fire Station 77 around-the-clock with two firefighters and a paramedic, and over half a million additional dollars for five deputy sheriffs and a patrol car. The tribe also must contribute \$50,000 annually to programs that treat people with gambling problems, and must make graduated annual payments that will total \$200,000 to Placer Legacy, a group dedicated to open space protection.

The Placer County/United Auburn Indian Community MOU also spells out terms of agreement between the county and the tribe on major issues associated with large commercial development undertaken by the casino, including land use ordinances, building codes, law enforcement and environmental impact mitigation. But its real authority derives from an item tucked away in the appendix: the Tribal Resolution of Limited Waiver of Sovereign Immunity. It's a key voluntary concession by the tribe that allows Placer County to enforce the MOU in court, despite the tribe's status as a sovereign government.

The Placer MOU is the envy of officials from Indian casino counties throughout the state that cannot tax or regulate activities on tribal trust land, but must nonetheless pay for services that the casinos create a need for. The MOU is so well liked by California's elected officials, in fact, that the California State Association of Counties (CSAC) wants to see a requirement for judicially enforceable agreements like the Placer MOU written into the Tribal-State Gaming Compact.

DeAnn Baker, the CSAC's legislative representative, says her organization isn't, however, necessarily looking to make Placer County's MOU a statewide model. "The details of the agreements can be left to the tribe and the local jurisdiction to work out," she says. "What the counties mainly want is the leverage to ensure that their concerns can't be ignored" as Indian gaming proliferates in the state.

Last year, when then-Gov. Gray Davis began renegotiating the state compact with tribal representatives, the CSAC formed an Indian Gaming Working Group, hoping to sell Davis on the idea of enforceable agreements. Chaired by Mike McGowan, members of the group were making headway until the campaign to recall Davis from office disrupted the compact talks. Representatives of current Gov. Arnold Schwarzenegger are now renegotiating the compact in a way that's only mildly pleasing to members of the CSAC. "The state's negotiators are sensitive to the issues facing counties," Baker says, "but we're concerned that they are concentrating on getting revenue for the general fund, rather than specifically addressing local level issues and their associated costs."

McGowan is a bit more direct. "We believe the local jurisdiction knows best, and we don't like the state's one-size-fits-all approach." In his other capacity, as chair of the Yolo County Board of Supervisors, he helped negotiate an MOU with the Rumsey Rancheria, owners of the Cache Creek Casino. That MOU is as comprehensive as Placer's, but is more locally appropriate. McGowan wants to ensure that other county boards have as much room to negotiate as his did.

Tribally-Funded Resources Meet Casino-Generated Demands

Speaking for the sheriff's office, Under-sheriff Steve D'Arcy reports that, since Thunder Valley opened in June 2003, "We've consistently received an average of one call per day for incidents at the casino." These have included cases of fighting, excessive drinking, and even "large frauds, such as patrons or dealers cheating the casino."

Guyan says that Station 77 has responded to nearly all of the 318 calls gen-

erated by Thunder Valley activity between June 1 and December 31, 2003, plus another 64 in the first three months of this year. According to Rui Cunha, program manager for the Office of Emergency Service, the two next closest stations to Thunder Valley — Station 70 in Lincoln and Station 100 in Dry Creek — are no busier than they were before Thunder Valley opened.

The sheriff's office and the fire department agree that new tribally funded resources adequately meet the casino-generated demands for them. D'Arcy says that the large increases in crime that many people feared would result from the casino "have not come to pass. There have been no violent felonies, and that's partly because the casino is a professional, well-run organization. Their own security is tight enough to deter major crime, and their staff works very cooperatively with us."

Placer County District 2 Supervisor

Robert Weygandt, whose district encompasses Thunder Valley, says that the tribal government is making its MOU payments in good faith and on time. "They're paying all in-lieu taxes that they'd normally have to pay, just as if they were a major private developer." But it means even more to Weygandt that the tribe agreed to comply with county land use standards. "I pitched the land use compliance idea to them, reasoning that their operation had the potential to destroy the surrounding area and be a disincentive to other potential developers." And when they submitted their plans for county review, "the tribe was as conscientious as any applicant I've ever dealt with as a county supervisor."

In a county where Proposition 1A, the March 2000 ballot measure that opened the door to Indian gaming in California, was voted against by 2/3 of voters, the prospect of a 210,000-square-foot gambling palace in the neighborhood made a lot of people furious. (Some of the angr-

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est protests came from a nearby residential community developed by a man who made his name and fortune in the Nevada gaming industry.)

But after the Placer County Counsel researched the matter and concluded that Indian gaming was beyond county jurisdiction, Weygandt and his colleagues decided to negotiate with the tribe. The resulting MOU was bitterly divisive, as opponents interpreted the board's 4-1 vote to adopt it as an endorsement of gambling. (Weygandt voted with the majority and nearly faced a recall move, although he subsequently ran unopposed for reelection.)

The Future of Comprehensive Gaming Compacts

There are 53 Indian casinos in California, and another 26 in the works; 61 tribal governments have signed gaming compacts with the state. But Placer and Yolo counties are among only a handful of

local jurisdictions to have reached comprehensive MOUs with the tribal governments within their borders. As McGowan puts it, "A tribe's position is, 'Why should we waive our sovereign powers when we don't have to?' The county's position is, 'Why should we get less from a tribe than what we would get from a private developer?' The two positions are hard to reconcile." The tribes have the legally stronger position and can be reluctant to forfeit their sovereign powers when they are finally in a position to exercise them to their advantage.

In case the state's compact negotiators don't seek a requirement for judicially enforceable agreements, the Indian Gaming Working Group is already talking directly with tribal governments who are looking to either build new casinos or expand existing ones. "The few examples of comprehensive MOUs show that if you can get the parties to negotiate, good things can happen," says Baker.

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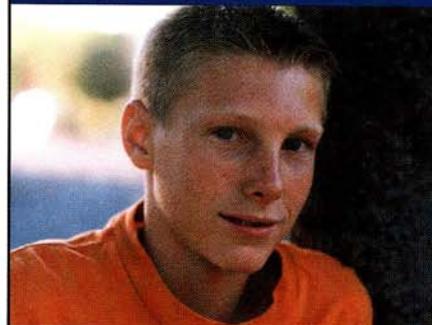
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