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## CITY COUNCIL REPORT

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### COUNCIL REQUEST

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TO: Lisa Takata  
Deputy City Manager

PACKET DATE: January 22, 2015

FROM: Thomas Remes  
Government Relations Director

SUBJECT: CONSTRUCTION OF NEW INDIAN CASINOS ON UNINCORPORATED  
LAND IN THE METRO PHOENIX AREA

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This report responds to questions raised regarding the possible construction of new Indian casinos on unincorporated land located within the greater Phoenix metropolitan area.

#### THE ISSUE

Question #1: Can Indian gaming be located on any unincorporated lands?

Answer: Yes, if certain federal and state requirements are met, including:

- The tribe meets specific requirements under the Indian Gaming Regulatory Act (IGRA), which generally prohibits gaming on Indian lands that are acquired in trust after October 17, 1988 (the enactment date of the IGRA), but includes certain exceptions for land acquired in trust as part of:
  - The initial reservation of an Indian tribe acknowledged by the Secretary of the Interior (Secretary) under the federal acknowledgment process;
  - Settlement of a land claim (this is the applicable exception to the West Valley Casino case); or
  - Restoration of lands for a landless tribe restored to federal recognition.

Newly acquired trust lands can be taken into trust if the Secretary, after consultation with the Indian tribe, other nearby tribes and appropriate state and local officials, determines that a gaming establishment on newly acquired lands would be in the best interests of the Indian tribe and its members and would not be detrimental to the surrounding community. The governor, however, must concur with the Secretary's determination in order for this exception to apply.

- The tribe complies with the existing tribal-state gaming compact, which includes:
  - Restrictions on the number of casinos that each tribe can operate;
  - Restrictions on the number of gaming devices that each tribe is entitled to use;
  - Restrictions on the number of gaming devices permitted at each facility.

At this time, city staff is not aware of any Indian tribe, besides the Tohono O'odham Nation, acquiring lands under the IGRA in unincorporated areas, with the purpose of building a casino to allow Indian gaming.

Question # 2: Are gaming casinos subject to local zoning requirements?

Answer: No. Under the IGRA, the Secretary is empowered to acquire lands in trust for Indian tribes and proclaim the acquired lands as reservation land under Department of the Interior guidelines. In so doing, the acquired lands become the sovereign property of the Indian tribe and are subject that to the tribe's own zoning requirements.

Question #3: Has the city contacted Senator McCain's office?

Answer: Yes, the Office of Government Relations, through the city's DC team, reached out to Nick Matiella, Legislative Assistant in Senator McCain's office, to inquire about the issue of Indian casinos on unincorporated land and specifically the Keep the Promise Act of 2015.

The Keep the Promise Act of 2015 (S. 152) is legislation, sponsored by Senator John McCain and Senator Jeff Flake, which would prohibit the construction of any new Indian gaming operation on unincorporated land in the metro Phoenix area that is not contiguous to an existing Indian reservation. A copy of the current version of S. 152 is attached to this report.

Representative Trent Franks (AZ-8) has introduced an identical bill, H.R. 308, in the U.S. House of Representatives. H.R. 308 is cosponsored by Representative Paul Gosar (AZ-4), Congresswoman Ann Kirkpatrick (AZ-1), Representative Matt Salmon (AZ-5) and Representative David Schweikert (AZ-6).

### RECOMMENDATION

This report is for information only.

114TH CONGRESS  
1ST SESSION

**S.** \_\_\_\_\_

To prohibit gaming activities on certain Indian land in Arizona until the expiration of certain gaming compacts.

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IN THE SENATE OF THE UNITED STATES

Mr. MCCAIN (for himself and Mr. FLAKE) introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

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**A BILL**

To prohibit gaming activities on certain Indian land in Arizona until the expiration of certain gaming compacts.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Keep the Promise Act  
5       of 2015”.

6       **SEC. 2. FINDINGS.**

7       Congress finds that—

8               (1) in 2002, the voters in the State of Arizona  
9       approved Proposition 202, the Indian Gaming Pres-  
10       ervation and Self-Reliance Act;

1           (2) to obtain the support of Arizona voters to  
2           approve Proposition 202, the Indian tribes within  
3           Arizona agreed to limit the number of casinos within  
4           the State and in particular within the Phoenix met-  
5           ropolitan area; and

6           (3) this Act preserves the agreement made be-  
7           tween the Indian tribes and the Arizona voters until  
8           the expiration of the gaming compacts authorized by  
9           Proposition 202.

10 **SEC. 3. DEFINITIONS.**

11       In this Act:

12           (1) INDIAN TRIBE; CLASS II GAMING; CLASS III  
13           GAMING.—The terms “Indian tribe”, “class II gam-  
14           ing”, and “class III gaming” have the meanings  
15           given those terms in section 4 of the Indian Gaming  
16           Regulatory Act (25 U.S.C. 2703).

17           (2) PHOENIX METROPOLITAN AREA.—The term  
18           “Phoenix metropolitan area” means land within  
19           Maricopa County and Pinal County, Arizona, that is  
20           north of latitude 33 degrees, 5 minutes, 13 seconds  
21           north, east of longitude 113 degrees, 20 minutes, 0  
22           seconds west, and west of longitude 110 degrees, 50  
23           minutes, 45 seconds west, using the NED 1983  
24           State Plane Arizona FOPS 0202 coordinate system.

1 **SEC. 4. GAMING CLARIFICATION.**

2 (a) PROHIBITION.—Class II gaming and class III  
3 gaming are prohibited on land within the Phoenix metro-  
4 politan area acquired by the Secretary of the Interior in  
5 trust for the benefit of an Indian tribe after April 9, 2013.

6 (b) EXPIRATION.—The prohibition in subsection (a)  
7 shall expire on January 1, 2027.