

GAMING LEGALNEWS

CASINO LOCATION IMPACTS LONG-TERM SUCCESS

by Dennis J. Whittlesey

Location, location, location is a well-established mantra in the real estate business. Tribal casinos are not exempt – particularly in California, where tribal casinos are a dominating influence in the state's gaming industry (card rooms being the other major gaming industry).

The impact of the Graton Resort & Casino in Rohnert Park, California, on the River Rock Casino on the Dry Creek Rancheria is a case on point. The River Rock Casino is some six miles west of the Geyserville, California, exit on U.S. Highway 101 on a two-lane road and up a narrow driveway to the top of a hill overlooking the Alexander Valley wine country. While the setting offers sensational views, it is not easy to get to. However, for 12 years it was the only casino in its service area. As a result, its location was of little significance until the Graton casino opened last November.

The Alexander Valley is one of California's most productive grape-producing valleys and the home of some of the finest wines produced anywhere in the world. The land owners long ago organized as the Alexander Valley Association ("AVA"), and the organization has been an important and effective voice for the valley landowners and their primary industry. When Dry Creek first announced its intentions to develop a casino, the AVA leadership recognized that the Rancheria location was troublesome for many reasons, the most important of which was potentially heavy traffic through the pastoral community of Geyserville and the difficult travel for both cars and large trucks serving the casino along the two-lane road and up the hill on which the Rancheria was located. The AVA suggested that the casino be located on Highway 101 and identified available off-reservation sites. The Tribe understandably wanted to develop its casino project within the boundaries of the Rancheria, and with that in mind, the project was developed on the Rancheria hill, which required the development of water and sewer service, as well as a major construction project to "stabilize" the hill itself so that the casino facilities could even be constructed. The "hill stabilization" project alone cost the Tribe and its investors an additional \$15 million.

Geyserville is some 30 miles north of the Graton casino in Rohnert Park, meaning that the Graton casino is more convenient to people in the high population areas of Marin County and San Francisco to the south. The Graton casino and resort also offers many drinking and dining venues – including several restaurants opened by celebrity chefs from the Bay area, as well as a resort hotel and extensive gaming stations throughout the property. And patrons save at least 40 minutes' drive time each way on the multi-lane U.S. Highway 101, which Graton directly abuts.



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GAMING LEGAL NEWS EDITORIAL BOARD

Robert W. Stocker II, Gaming Law
517.487.4715 • rstocker@dickinsonwright.com

Dennis J. Whittlesey, Gaming Law/Indian Law
202.659.6928 • dwhittlesey@dickinsonwright.com

Michael D. Lipton, Q.C., Gaming Law
416.866.2929 • mdliptonqc@dickinsonwright.com

Peter H. Ellsworth, Gaming Law/Indian Law
517.487.4710 • pellsworth@dickinsonwright.com

Glenn M. Feldman, Gaming Law/Indian Law
602.285.5138 • gfeldman@dickinsonwright.com

Peter J. Kulick, Gaming Law/Taxation
517.487.4729 • pkulick@dickinsonwright.com

Kevin J. Weber, Gaming Law
416.367.0899 • kweber@dickinsonwright.com

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The impact of Graton on River Rock has been significant. It reinforces the need to include in long-range planning for casino development the three key ingredients for any project placement: "location, location, location."

Prior to the Graton grand opening this past November, the Dry Creek Pomo enjoyed a 12-year monopoly on gaming in the immediate vicinity and had the closest Highway 101 gaming facility to Marin County and San Francisco. During that time, the casino was so prosperous that the Tribe was making per capita payments in amounts reported to be \$600 monthly to each of its 640 tribal members, who previously had little economic opportunity. The revenues for 2010 (the last year for which financial data is available) were reported to be \$124 million, and River Rock employed more than 600 people. The Tribe itself had more than 60 full-time employees.

However, glory days do not always last. Since the Graton casino opened, the River Rock revenues have declined. Tribal officials state that their revenues have dropped by 30 percent. It has been asserted that the actual drop is greater. In any event, more than 100 of River Rock's employees have moved to Graton, and the tribal employment has fallen from 60 to a reported "handful" of staff members. Also, the per capita payments are now reported to be substantially lower than what they were only a few months ago.

Adding to the economic troubles facing the Tribe is the report that it has an outstanding debt of \$150 million owed to bondholders.

The Dry Creek Pomo is now disenrolling members. One of the disenrolled Dry Creek members is the former Tribal Chair who oversaw the planning, construction, and development of River Rock. A recent notification of another round of disenrollments has been circulated, and among the next 75 to be expelled are the two daughters of that former Tribal Chair. Fewer tribal members typically equates to larger per capita payments to the remaining members. This is a pattern of conduct that has occurred within several tribes experiencing economic downturns in casino operations.

As already noted, the 12-year run was wildly successful for the casino and the Tribe. However, the inevitable development of competition has become reality. The development of Graton to the south on Highway 101 will soon be matched by a smaller tribal casino proposed for Cloverdale, which is only 9.5 miles north of Geyserville and also abutting Highway 101. Yesterday's "great" location can quickly become today's "challenging" location, and this underscores the need for careful consideration of potential future competition and the selection of the best available site for a casino development.

GLENDALE CITY COUNCIL SOFTENS STANCE ON TOHONO O'DHAM CASINO

by Patrick Sullivan

After years of losses in court and an estimated \$3 million in legal fees, the Glendale, Arizona City Council appeared to ease its opposition to the location of an Indian casino in Glendale within the Phoenix metropolitan area and voted to begin formal negotiations with the

Tohono O'odham Nation regarding the proposed West Valley Resort and Casino, which is projected to bring \$300 million to the financially troubled city.

"We want to have a casino and resort near Glendale. It's going to bring people into Glendale who will spend money, and we desperately need that. We're so broke," Councilwoman Norma Alvarez told local reporters. The City's series of legal challenges and defeats, outlined below, have monopolized the City Council's time and burned through its legal budget, and after a series of positive informal negotiations, the Tribe and the City appear closer to finding common ground.

The Council also decided in a narrow 4-3 vote to withdraw its support for HR 1410, Arizona Congressman Trent Franks' federal legislation introduced to block construction of any tribal casinos in the Phoenix area, including the Glendale project, until 2027 when the existing Arizona gaming compacts expire. The withdrawal of the City's support for Franks' bill may ensure that the bill does not become law.

Glendale Casino Timeline:

1960: Federal dam projects flood large parts of the Tohono O'odham Nation reservation near Tucson.

October 20, 1986: Congress enacts the Gila Bend Indian Reservation Lands Replacement Act of 1986 to compensate the Tribe for its loss of land. Section 6(d) of the Act required the Secretary to accept land into trust in any of three counties, including Maricopa County, home to Phoenix and Glendale, but not "within the corporate limits of any city or town."

November 27, 2001: City of Glendale adopts Ordinance No. 2229 annexing unincorporated Maricopa County land completely surrounded by the City of Glendale.

May 28, 2002: After a landowner's challenge of the annexation in Arizona court, the City subsequently passes Ordinance No. 2258 "abandoning" the annexation.

November 5, 2002: Arizona voters pass Proposition 202 authorizing the State to enter into Class III gaming compact renegotiations with Indian tribes.

January 24, 2003: Secretary of the Interior approves Tohono O'odham Class III gaming compact.

August 21, 2003: Tribe anonymously purchases 135 acres of the unincorporated land within Glendale city limits, a prime casino location with access to the large Phoenix market.

January 28, 2009: Tribe submits application to Bureau of Indian Affairs to acquire 134.88 acres of Tribe's Glendale land into trust status.

January 29, 2009: Tribe publicly announces intention to build a casino at the Glendale site. Casino opponents charge that the Tribe had promised to limit off-reservation gaming in metropolitan areas in talks prior to Proposition 202 and the 2003 compact.

June 23, 2009: To prevent the pending trust acquisition, the City adopts Ordinance No. 2688 deeming portions of the Tribe's land to be incorporated into Glendale as of 2001, arguing that its own reversal of the 2001 annexation never became final.

March 10, 2010: Superior Court of Maricopa County grants summary judgment to City of Glendale holding that the 2001 annexation was valid and effective.

March 12, 2010: Tribe amends its trust application to ask BIA to proceed with 53.54 acres and hold the application for the annexed portions of the land in abeyance until the annexation issue was resolved.

July 23, 2010: U.S. Assistant Secretary of the Interior - Indian Affairs issues decision to accept 53.54 acres into trust, determining the land met all the requirements of the Gila Bend Act as the land is not "within" the city limits of Glendale, but withholds decisions on eligibility of the land for gaming.

February 3, 2011: Arizona Court of Appeals reverses the March 10, 2010, grant of summary judgment in favor of Glendale, holding that the 2001 annexation never became final and orders the City to pay Tribe's legal fees.

March 3, 2011: U.S. District Court for the District of Arizona grants summary judgment in favor of the United States in challenge brought by the City of Glendale and Gila River Indian Community, concluding that the Secretary of the Interior reasonably applied the Gila Bend Indian Reservation Lands Replacement Act when he accepted the Glendale land into trust.

September 11, 2012: A split panel of the U.S. Court of Appeals for the Ninth Circuit affirms the District Court's March 3, 2011, order granting summary judgment to the United States in *Gila River et al. v United States*. The dissenting judge called the decision by the Secretary to accept the land "an extraordinary assertion of power."

April 11, 2013: Congressman Franks introduces federal legislation, entitled "Keep the Promise Act of 2013," prohibiting gaming on the Glendale land.

May 7, 2013: U.S. District Court for the District of Arizona rejects claims by State of Arizona that the Tribe's 2002 gaming compact prohibits new casinos in the Phoenix metropolitan area, rejecting the State's claim that the Tribe misled voters in a ballot initiative allowing the compact and secretly planned to build in Glendale. The court orders additional briefing on the State's claim that the Tribe breached an oral contract to not build the casino.

June 25, 2013: Arizona federal judge rules for the Tribe on the remaining breach of contract claims, holding that there was no agreement in the compact or enforceable oral agreement that the Tribe would not open a casino in the Phoenix metropolitan area.

July 9, 2013: Tohono O'odham Nation moves the Arizona federal court for an award of its attorney's fees of over \$4 million.

The support of the City and the defeat of HR 1410 in Congress would remove the most significant political hurdles for the Tribe. The prime location in Glendale and direct access to the large Phoenix market would guarantee success for the project. It would also guarantee fierce competition for the other tribal casinos already serving the lucrative Phoenix market.

Patrick Sullivan is an associate in Dickinson Wright's Washington, D.C., office. He can be reached at 202.659.6936 or psullivan@dickinsonwright.com.