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The Political Economy of Indian Gaming: The New England Experience

Since the late 1980s, many Native American tribes have turned to casino gaming as an economic development tool. The experience of New England, while instructive, is also one of extremes. On the one hand, two Connecticut tribes successfully negotiated with the state, and today operate what are reputed to be among the most successful casinos in the world. On the other hand, several other New England tribes have been unsuccessful at reaching gaming agreements with their more reluctant state governments. At stake are billions in gaming revenues and the potential for job creation and revitalization in many poor reservation communities. Eric Henson, of both Lexecon, Inc. and the Harvard Project on American Indian Economic Development, and Luxman Nathan explore how the tribal-state compacting process impacts the abilities of tribes to achieve their development objectives and what potential challenges lie ahead for Indian gaming.

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Last fall Congress passed legislation that will dramatically alter the financial services industry in the United States. Carol Lewis explains how the sweeping reforms in the Gramm-Leach-Bliley Act impact bank holding companies, banks, community groups, and consumers.



The Political Economy of Indian Gaming: The New England Experience

On February 25, 1987, the U.S. Supreme Court issued a landmark ruling in *California v. Cabazon Band of Mission Indians (Cabazon)*. This suit, brought by the Cabazon and Morongo Bands of Mission Indians, was decided in the tribe's favor and set the stage for an explosion in Indian gaming throughout the United States. The Supreme Court found that:

State jurisdiction is pre-empted if it interferes or is incompatible with federal and tribal interests reflected in federal law, unless the state interests at stake are sufficient to justify the assertion of state authority. The federal interests in Indian self-government, including the goal of encouraging tribal self-sufficiency and economic development, are important, and federal agencies, acting under federal laws, have sought to implement them by promoting and overseeing tribal bingo and gambling enterprises. Such policies and actions are of particular relevance in this case since the tribal games provide the sole source of revenues for the operation of the tribal governments and are the major sources of employment for tribal members.

The *Cabazon* ruling found that since California operated a lottery and permitted pari-mutuel betting on horse races by non-Indians, the state was not entitled to regulate gaming operations established by the Indian tribes. The opinion of the Supreme Court in *Cabazon* had consequences that extended well beyond California, given that many states had authorized lotteries and other forms of gambling by the late 1980s.

In the years since the *Cabazon* ruling, gaming operations have proliferated on Native American reservations across the country, and gaming revenues have skyrocketed. According to the National Gambling Impact Study Commission, in 1995 tribal Class III or "casino-type" gaming operations generated total revenues of approximately \$4.9 billion, over half of which was earned by only ten tribes. This figure was nearly equivalent to the total gaming revenues of the 12 Atlantic City casinos in 1995; by 1996 tribal gaming revenues had surpassed those in Atlantic City, and tribes grossed an amount greater than 50 percent of the gaming revenues of all 213 licensed Nevada casinos.

More recent statistics from the National Indian Gaming Commission (NIGC) point to a steady growth in tribal gaming revenues. According to the NIGC, as of June 1999, 195 tribes operated 325 gaming enterprises in 28 states across the country. The NIGC estimates tribal casino gaming revenue at \$8.2 billion in 1998. In contrast to other gambling operations, revenues from tribal gaming are not taxable by the federal or state government; however, many tribes have voluntarily entered

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revenue-sharing agreements with state authorities. The increase in Indian gaming revenues is largely due to rising patronage of Indian gaming facilities by Americans. In a survey conducted by the G-Tech Corporation, in 1999 about 30 percent of respondents engaged in gambling activity at an Indian casino establishment at least once.

The phenomenal success of a handful of Indian tribes with gaming has led to movements by many tribal nations to enter this industry, often provoking legal and political battles with reluctant state governments. In the New England region, several non-gaming tribes have been attempting to start their own gaming enterprises, mostly because of the impressive examples of the Mashantucket Pequots and the Mohegans of Connecticut. However, for the vast majority of gaming tribes the revenue streams from casinos serve as modest additions to their coffers. Still, many impoverished tribes look to gaming as a means to end years of dependence on the federal government and to accelerate economic development activity on their reservations.

Gaming in Indian Country: Cultural Roots and Current Realities

Though the *Cabazon* ruling might be considered the beginning of the modern era of Indian gaming, the relationship between tribes and games of chance significantly pre-dated Justice White and his contemporaries on the Supreme Court. Gaming activity appears to be central to the cultural life of many Native American communities (see box on page 4.)

This is not to say that all Native people traditionally endorsed gambling. Some tribes, such as the Hopi, were (and still are) opposed to gaming. As with any issue, cultural norms and beliefs regarding gaming range broadly among Native Americans. The Crow Tribe of Indians, whose current reservation is located in southwestern Montana, found that gaming activities such as the hand game served to strengthen societal bonds and the familial/friendship ties that were crucial for the survival of a hunting and gathering society. To this day these games serve an important traditional role. For example, Crow families host hand games to raise money to send with children going to college, or to help with a clan member's medical bills. In addition to more traditional gambling pastimes, bingo was the major commercial form of Indian gaming on reservations, well before the *Cabazon* ruling.

Apart from cultural attitudes towards gaming, the major argument for large-scale casino establishment on Indian reservations has been the potential for economic development. In fact, many tribal administrations have initiated plans to open gaming facilities within their reservation boundaries, with the intent of stimulating increased cash flow, tourism, and employment.

Despite the media-driven perception that Indian casinos have made all Indian people vastly wealthy, standards of living on most Native American reservations are still among the lowest in the country. For example:



Cultural Roots of Native American Gaming

Games of chance feature prominently in the traditional activities of many Native American tribes. Examples of gambling games historically played by tribes include:

- **Dice games**, including one played by the Nisenan of California. The Nisenan would use four dice made of split acorns, one side of which would be painted red or black. Wagers were placed before each round of play. The dice were thrown, and if two painted sides landed up (and the other two down), the roller would receive one point. If all four dice landed with the same sides up, the roller would receive four points. Each toss that resulted in a score earned the player another throw. After each player took a turn with the dice, the one accumulating the most points won the collected wagers.
- **Hand games**, guessing games played by many tribes in one form or another. The Crow Tribe is one example of a group that traditionally played this game, in which a small object was concealed in the hand of one player. The guessing player would attempt to select the hand the object was hidden in. A successful guess essentially gained one “point” for the guessing player, while an incorrect guess cost the guessing player a “point.” The stakes wagered in the hand game were often quite high, with various points representing wives, horses or other possessions.
- **Straw games**, involving the scattering of straws or reeds on the ground, with points scored according to the patterns formed by the dispersion of the straws. Edith Favour, writing about the pastimes of the Indians of Maine and the Maritimes, mentions that, “In playing both straws and dice-game[s], players have been known to bet all their possessions, even their freedom for a period of time, becoming slaves to the winners.”

- As of 1990, for reservation and trust lands, 53.8 percent of people 25 years of age and over were high school graduates. Only 3.9 per cent had bachelor’s or higher degrees. For the United States as a whole, the comparable numbers were 75.2 percent and 20.3 percent.
- The unemployment rate for the civilian labor force on reservation and trust land was 25.6 percent in 1990, as compared to 5.6 percent for the United States.
- According to the 1990 Census of Population, per capita income (1989 dollars) was \$4,478 on reservation and trust land, with 47.3 percent of families living in poverty.

The poor socioeconomic conditions observed throughout Indian Country derive from a lack of the requisite financial, human or physical capital to initiate or maintain development plans. Even those tribes who possess valuable endowments of natural resources — which they theoretically could exploit for the benefit of their citizenry — have not necessarily fared well.

This situation is the result of several interrelated factors. First, owing to their status as “sovereign dependent” entities, tribal governments often found themselves relying on the U.S. government for most economic development and revitalization efforts. For example, a majority of tribal funding for programs, from housing development to education tended to come from federal government appropriations. This dependent financial relationship removed incentives for tribal actors to aggressively pursue their own development projects.

Second, a lack of access to private capital and credit on reservations also severely limited the ability of tribal governments or tribal entrepreneurs to vigorously pursue commercial development. While lending on reservations has increased over the past decade, a host of legal impediments still constrain capital flows into reservation communities. Finally, while some reservations do have viable private sectors, it is not uncommon for tribal governments to own or operate most enterprises within a given Indian community. This may lead to the politicization of management decisions, where bloated tribal enterprises become job-generating, rather than profit-maximizing entities.

Not all tribal enterprises are doomed to failure. Some tribes have been extremely successful with their business ventures. Certainly the well-documented success of some Indian gaming operations is an affirmation of the ability of Native American enterprises to generate jobs and revenues. With these successes have come a decreased dependency on the U.S. federal government, spin-off businesses and projects, infrastructure development, and the creation of an adequate financial base to either directly finance or leverage outside capital for non-gaming business ventures on their reservations.

Why Gaming?

Why has gaming become the apparent development vehicle of choice for indigenous America? Two major reasons are: the emerging emphasis on tribal self-determination and the changing legislative and judicial environment surrounding Indian gaming rights.

Self-determination has become the major rallying cry among many tribal nations since the 1970s. Viewed in this light, gaming is an instrument of financial independence from the U.S. federal government and an exercise of inherent tribal sovereignty. Revenues from gaming operations allow tribes to fund social and economic development programs for their citizens, such as health care initiatives, infrastructure development, housing and homeownership assistance, and educational programs.

In addition, a series of legislative and court decisions in recent years have facilitated increased gaming development by Indian tribes. In particular, the *Cabazon* decision and the enactment of the Indian Gaming Regulatory Act (IGRA) in 1988 led to the recognition of tribal rights to regulate gaming activities on their reservations. The result is that gaming has emerged as an area of economic activity where tribes interact with state governments and potential business partners as equals rather than as subordinates.

As formulated, IGRA obligated the state governments to negotiate “in good faith” with tribes over the establishment of casinos on reservation property. IGRA also created a tripartite regulatory framework that involves the federal government, state governments, and tribal authorities (see box on page 6). When IGRA was first proposed, only a handful of tribes were actively engaged in gaming, and non-gaming tribes viewed the mandated involvement of state governments as an infringement on their sovereignty. Eventually the non-gaming tribes capitulated, and the current law was passed. Tom Acevedo, currently Chief of Staff for the Mohegan Tribe of Connecticut, explains that while tribes initially were unhappy with the legislation, IGRA effectively “allowed for the full blossoming of Indian gaming, almost like a Congressional blessing.” In fact, the passage of IGRA has helped once non-gaming tribes such as the Mohegans to quickly enter the field.

While gaming does have the potential to bring cash-strapped tribes significant financial benefits, the realized gains vary greatly from tribe to tribe. The major determinants of gaming profitability include tribal cultural attitudes toward gambling and the proximity of tribal gaming facilities to major metropolitan centers and interstate highways. Contrary to media-driven perceptions, very few tribes are capable of establishing gigantic, multi-billion dollar gambling enterprises like the Foxwoods Resort Casino operated by the Mashantucket Pequot Tribe of Connecticut, which is located serendipitously in the midst of the densely populated Boston-New York corridor. In fact, according to NIGC statistics, in 1998 one-third of the 250 tribal gaming operations had revenues of less than \$3 million; fewer than one-tenth grossed more than \$100 million. The majority of these smaller operations are located in sparsely populated areas such as the Great Plains or the Southwest. In many cases, considerable start-up, maintenance and operating expenses also lead to slim profit margins.

Those tribes fortunate enough to generate profits from their gaming operations face some restrictions in how they can spend gaming dollars. As formulated, IGRA stipulates that:

Indian Gaming: Multiple Layers of Regulation

Contrary to popular belief, casino gaming by Native American tribes is a highly regulated industry. In most cases, Indian gaming operations are regulated at the federal, state, and tribal levels.

The Indian Gaming Regulatory Act (IGRA) of 1988 established a regulatory framework that includes the National Indian Gaming Commission (NIGC) to regulate Class II (bingo) and Class III casino gaming on reservations. The mission of the NIGC is “to shield it [Indian gaming] from organized crime and other corrupting influences, to ensure that the Indian tribe is the primary beneficiary of the gaming operation, and to assure that gaming is conducted fairly and honestly by both the operator and the player.” The NIGC relies on federal appropriations and on fees levied on tribal bingo enterprises in order to finance its oversight duties.

The NIGC’s main responsibilities include approving Class III management contracts, monitoring and inspecting gaming operations, and reviewing the licensing of Class III primary management and key personnel. The NIGC has the authority to levy fines and temporarily or even permanently close a tribal gaming operation found to be in violation of regulations.

State involvement derives primarily from the compacting process under IGRA. States have used the compacting process to wrest certain concessions from gaming tribes, including revenue-sharing agreements that essentially act as taxes on otherwise untaxable Indian gaming proceeds. Some states also require tribes to disclose their employment, training, security, and fiscal management practices to the state gaming authority. States also work with tribal governments to monitor policing, health and safety, traffic, and environmental issues that accompany casino development.

Tribal regulation of gaming operations is mandated under certain provisions of IGRA. IGRA maintains that tribes must solely own their casinos but can enter into management agreement with outside interests. Tribes must also establish a regulatory process that conducts background investigations on key gaming personnel, issues licensing standards for such personnel, and sets standards for employment. Most tribes have an independent gaming commission that acts as a tribal regulatory body. In many cases, tribes work with states to adhere to local employment standards.

Tribes also work with and report to the NIGC. The regulatory structures of the larger, more successful gaming tribes have served as models for the NIGC in some of its rulings, including the agency’s recent Minimum Internal Control Standards. According to Kyle Nayback, the Director of Congressional and Public Affairs for the NIGC, the commission has had little problem in ensuring compliance among gaming tribes. “By and large, most tribes want to be in compliance with the laws. Once you point out the deficiency, the tribes are quick to remedy the problem.”

[N]et revenues from any tribal gaming are not to be used for purposes other than —

- (i) to fund tribal government operations or programs;
- (ii) to provide for the general welfare of the Indian tribe and its members;
- (iii) to promote tribal economic development;
- (iv) to donate to charitable organizations; or
- (v) to help fund operations of local government agencies.

In addition, tribes that use their gaming revenues to make per capita payments, must submit to the Secretary of the Interior a plan for allocating revenues to the above-mentioned uses. They must also make provisions for managing the per capita payments to minors or mentally incompetent tribal members, and they must notify members of their federal tax liability from these payments.

Apart from per capita payments, gaming tribes often use their net proceeds to provide public services for their citizens. For example, the Gila River Tribe of Arizona is investing \$18 million of its casino revenues in capital improvement projects, including the development of a tribal court and criminal justice facility on their reservation. For severely impoverished tribes, even relatively modest financial returns can have an enormous impact on reservation quality of life.

IGRA, State Governments and Compacting

IGRA establishes three types or “classes” of games:

- *CLASS I*: Defined as social games solely for prizes of minimal value or traditional forms of Indian gaming engaged in by individuals as a part of, or in connection with, tribal ceremonies or celebrations;
- *CLASS II*: Defined as bingo, “whether or not electronic, computer, or other technologic aids are used in connection therewith” and card games that are explicitly authorized by the state, or are not explicitly prohibited by the laws of the state; and
- *CLASS III*: Defined as “all forms of gaming that are not class I gaming or class II gaming.”

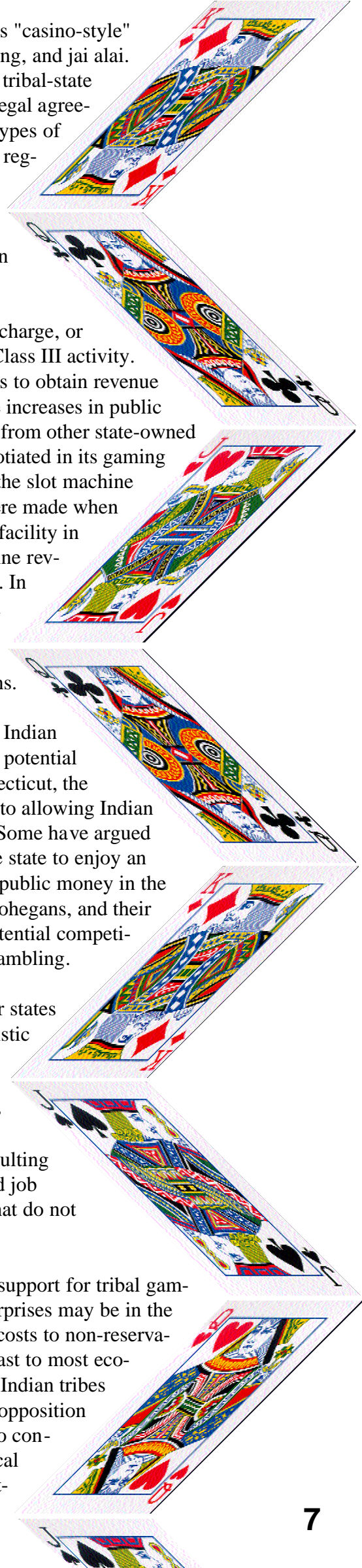
Class III gaming encompasses what people generally think of as "casino-style" gambling. It includes table card games, slot machines, pari-mutuel racing, and jai alai. With regard to Class III gaming, IGRA requires that tribes enter into a tribal-state compact prior to commencing operations. A tribal-state compact is a legal agreement which typically outlines a range of relevant issues including the types of games offered in a potential tribal facility, the extent of state and tribal regulatory control, security procedures, the extent of criminal and civil jurisdiction between the state and the tribe, and infrastructure development. The compacting process has thus become the mechanism by which states can raise objections or concerns related to proposed Indian gaming activities.

IGRA explicitly prohibited states from imposing "any tax, fee, charge, or other assessment," on a tribe or tribally-authorized entity engaging in Class III activity. However, states are able to use their leverage in the compacting process to obtain revenue sharing agreements with gaming tribes. This can lead to very lucrative increases in public revenues for a state government, perhaps offsetting declining revenues from other state-owned gaming operations. For example, in 1991 the State of Connecticut negotiated in its gaming compact with the Mashantucket Pequot Tribe to receive 25 percent of the slot machine revenues from that tribe's Foxwoods Casino. Similar arrangements were made when the neighboring Mohegan Tribe of Indians opened their Mohegan Sun facility in 1995. In FY1999 Connecticut received over \$280 million in slot machine revenues from the two Native American casinos operating within the state. In contrast, the Connecticut lottery brought in \$271 million to the general fund during the same fiscal year. While revenue sharing agreements are typically voluntary on the part of gaming tribes, they give states a mechanism to "tax" revenues from these otherwise untaxable operations.

States must also weigh the potential increases in revenues from Indian casinos against the returns to their existing gambling enterprises or the potential cost of expanding state-owned gaming operations. In the case of Connecticut, the steady decline in lottery sales may have made the state more receptive to allowing Indian casinos, as long as they operated under a revenue-sharing agreement. Some have argued that the decision by Connecticut to compact with the tribes allowed the state to enjoy an increase in its gaming revenues risk-free, without having to invest any public money in the construction of a competing state-run facility. Only the Pequots, the Mohegans, and their investors bear the risks of losing their up-front investment dollars if potential competitors move into nearby states, if and when these states legalize casino gambling.

On the other hand, Indian gaming raises additional concerns for states with more profitable state-run gaming facilities. For example, is it realistic to assume that projected increases in visits by in-state residents to the Indian facility will not cut into the existing sales of state lottery tickets or wagers at the state-run track? Will visits from out-of-state gamblers and tourists make up for any shortfalls in estimated in-state gamblers? Furthermore, in the effort to get a compact signed tribes and their consulting experts have an incentive to overstate figures for potential revenues and job growth. As a result, some states demand fixed payments from tribes that do not depend on future casino revenues.

Finally, state governments must heed political opposition to or support for tribal gaming from their non-native constituents. While establishing gaming enterprises may be in the best economic interest of a particular tribe, the perceived benefits and costs to non-reservation communities may override the desires of the Indian tribe. In contrast to most economic development projects, gaming facilities — whether operated by Indian tribes or not — are still perceived as "sin" enterprises and can arouse public opposition on moral grounds. Apart from morality-based objections, there are also concerns about the costs from increased traffic, crime, and even pathological gambling that state governments must take into account while compacting.



Nowhere have the successes and failures of Indian gaming initiatives been better illustrated than in New England. With regard to Indian gaming, the New England region is one of extremes. The region is home to two of the most successful Indian casinos. At the other end of the spectrum, several New England-based tribes have had no success in using gaming as an economic development tool.

The New England Experience: Gaming Tribes

New England gaming tribes embody the general public's perception of Indian gaming in the United States. Both the Pequots and the Mohegans operate multi-million dollar gaming facilities in the state of Connecticut. The Pequots' Foxwoods Resort Casino is reputed to be the largest in the world.

The Pequots were the first tribe to enter a gaming compact with the State of Connecticut. In the years prior to entering the compacting arrangement, the Pequot tribe operated a successful high-stakes bingo operation in southeastern Connecticut. In 1993 the government of Connecticut and the Pequot Tribe entered into a joint Memorandum of Understanding, stipulating that a minimum of 25 percent of gross operating revenues from video facsimile (slot machines) at Foxwoods would be provided to the state on an annual basis. Connecticut's share would increase to 30 percent if the slot revenues were less than \$100 million. In return, the Connecticut government essentially granted the Pequots a monopoly on Class III gaming within the state. The Mohegan Tribe, which was federally recognized in 1994, entered into a compact with Connecticut that same year with a similar revenue-sharing agreement. The Pequots subsequently amended their previous compact in order to allow the Mohegans to operate their own Class III gaming facility.

In both cases, the tribes relied on outside financing to begin their developments. Since the tribes had very little success with prior non-gaming development projects, they initially lacked access to capital and credit from domestic sources. The Pequots, in fact, had a difficult time raising capital for their initial casino construction. Eventually they secured financing with the help of a Malaysian investment group. Today, owing to their successful performance, the Pequots have established strong relationships with the financial community. The Mohegans formed a partnership with Trading Cove Associates, whose most prominent member is South African gaming magnate Sol Kerzner, the Chairman of Sun International Resorts. Since the Mohegans lacked financial capital, they looked to their South African partners for a significant initial investment to fund their start-up. For the first seven years of operation, Trading Cove Associates also runs the Mohegan Sun facility.

When they began to initiate discussions with Connecticut, the Mohegan tribe benefited greatly from the past experience of the Pequots. The Mohegans relied upon the Pequot model for more than just compacting. Details such as road access to their facility were carefully considered, based on the Foxwoods experience. For example, local authorities had often noted that traffic to and from the Foxwoods casino had increased more rapidly than the local infrastructure could bear. In response, the Mohegans funded a \$40 million access ramp from the highway to their facility, which is credited with alleviating potential traffic problems.

As could be expected, reports of increased traffic and crime are common, but both tribes have been working actively with neighboring officials to minimize negative impacts on the region. Relations between the Mohegan Tribe and the surrounding communities are positive, according to tribal officials and Harry Raucher, President and Chief Executive Officer of the Eastern Connecticut Chamber of Commerce. Mr. Raucher's organization, whose membership includes 13 towns, the city of Norwich, and both the Mashantucket Pequot and the Mohegan nations, points to the favorable economic impact that both Indian casinos have had in their area. "New London County once had the highest per capita defense industry income in the country." As the defense industry declined, Mr. Raucher states, "No one could find work until the casinos opened."

The economic impact of the casinos has been substantial, especially in terms of job creation (see box below). According to studies prepared for the State of Connecticut's Division of Special Revenue by the WEFA Group, casino gambling and construction activity at both facilities in 1996 generated a net gain of 23,544 jobs paying \$657 million in wages. In addition, the WEFA group found that patrons of the larger Foxwoods Casino spent about \$7.00 per visit at other establishments and tourist attractions in Connecticut in 1992, and about \$8.00 per visit in 1996. The number of mainly out-of-state visitors to Foxwoods grew from 2.3 million in 1992 to roughly 16.1 million in 1996, leading to substantial spending by these Indian gaming patrons in the surrounding communities. The WEFA group also found that net spending by Foxwoods patrons at other retail establishments in surrounding communities had generated about 1,500 new jobs per year since 1993 and about \$13 million in average annual wages and salaries. Additionally, Mr. Raucher points to the impact this increased spending is having on local, non-tribal businesses. For example, because of the influx of visitors, local hotels and motels are in an expansionary phase, even though Foxwoods has approximately 1,500 hotel rooms and the Mohegans are in the process of building a similar facility for their casino.

While local groups may have initially opposed the development of both casinos, and there are still lingering problems with traffic and crime, it appears that the increased economic benefits are outweighing negative impacts. Leo Chupaska, CFO of the Mohegan Tribe, states that "the relationship between the [Mohegan] tribe and the host community has been excellent."

The Economic Impact: Employment from Tribal Casinos

Considerable debate surrounds the employment effects of tribal casinos. The potential employment impact is often a crucial factor influencing tribal-state compacting decisions.

For the most part, employment gains from tribal casinos have been impressive, leading to net job growth in often economically distressed areas. Once again the New England experience is highly illuminating. Take, for example, Foxwoods Casino in southeastern Connecticut, owned and operated by the Mashantucket Pequot Tribe. According to a study by WEFA Group for the State of Connecticut's Division of Special Revenue, the opening of the Foxwoods Casino in 1991 greatly increased the number of jobs created in the state. Between 1991 and 1993, legalized gambling was responsible for creating, directly or indirectly, over 15,000 full and part-time jobs (net figures), most of which came from the Foxwoods Casino. The majority of these jobs were in the construction field. Similar boosts occurred with the subsequent construction of the Mohegan Sun facility.

In addition, the same study finds that the economic impact from these jobs has been concentrated in low- and moderate-income (LMI) areas of southeastern Connecticut. The WEFA study estimates that over 71 percent of wages and salaries paid by the Foxwoods Casino goes to residents in the 122 lowest-income ZIP codes in Connecticut.

Despite the examples of Foxwoods and other Native American casinos, some argue that the potential employment impact is not so beneficial. They point out that most direct casino jobs are part-time, low-skill positions with low wages. There is also concern that the jobs created indirectly by casino development — apart from construction employment — also tend to be in the low-wage service sector. Thus there is added controversy over whether gaming provides enough "good" jobs to significantly reduce unemployment in a local economy. Given that enhanced regional job growth is often touted as a major benefit from Indian gaming, such employment-related concerns can hinder attempts by tribes to negotiate compacts with already reluctant state governments.

And then there are questions regarding who really benefits from the increased employment. In Native communities with rather small populations, the employment benefits accrue mostly to outsiders living in surrounding areas. On larger reservations, the bulk of the gaming employment benefits impoverished tribal members. Some gaming tribes have even seen their reservation unemployment rates drop from highs around 85 percent to virtually zero. While debate continues over whether Class III gaming provides "good" jobs with wages high enough to affect welfare rolls, for most tribes casino gaming is still viewed as an engine of job creation.

The tribe worked with surrounding towns from the beginning stages of casino development to anticipate problems and build consensus. In addition, Mr. Chupaska points out that “lots of tribal members live in the community and this facilitates a good working relationship.”

While membership is often divided over the gaming question, tribal support among the Mohegans for gaming was high, and the membership decided to utilize gaming as the “economic engine for the tribe,” according to the Mohegan’s Chupaska. With ever-increasing revenues from their gaming and newly enhanced access to capital and credit markets, the tribe is actively looking to “diversify into other areas in the long run.”

The Other New England Experience: Non-Gaming Tribes

The remarkable success of the two Connecticut tribes with gaming has sparked interest among other New England Indian communities, as well as concern in neighboring states. Tribes in Massachusetts, Rhode Island, and Maine have all unsuccessfully attempted to establish gaming operations in recent years. Their experiences illustrate how the mandated involvement of state governments in the compacting process can effectively block tribal gaming aspirations.

Take, for example, the Aquinnah Wampanoag tribe, whose small reservation is located on Martha’s Vineyard, Massachusetts. This tribe has repeatedly tried to get legislative approval for a gaming facility in the economically distressed New Bedford and then Fall River communities, since operating such a complex on Martha’s Vineyard is impractical. The tribe’s various proposals — one of which included acquiring a municipal golf course in New Bedford and converting the land into trust land — have been thwarted by Massachusetts legislators, some of whom are opposed to casino-style gaming on moral grounds. Attempts by the Wampanoags to open a high stakes bingo (Class II) facility have also been met with resistance.

However, legislative resistance may be slowly fading as a result of the phenomenal growth in gaming revenues just across the border in Connecticut. Recent casino gaming proposals in nearby Rhode Island bring added pressure: Studies for a proposed casino by the Narragansett Indians in Providence (see discussion below) estimate that almost 55 percent of its potential visitors will be from Massachusetts. With state legislators noticing more entertainment dollars being spent and more Massachusetts license plates at the Foxwoods and Mohegan Sun parking lots, gaming initiatives are gaining momentum. As of the writing of this article, the Wampanoag tribe is once again actively pursuing gaming in southeastern Massachusetts.

In the case of both the Passamaquoddy and the Penobscot nations of northern Maine, prior battles with the state have influenced their ability to conduct gaming. During land claim settlements with the State of Maine in the early 1980s, both tribes signed away their rights under future federal laws to operate gaming enterprises without explicit approval from the Maine legislature. IGRA, having been passed in 1988 subsequent to the land claims, was of no avail to the Passamaquoddy and Penobscot nations. So far the State of Maine has not been receptive to any tribal gaming proposals. Even if these tribes could secure casino approval from the state, it is doubtful that they could approach the financial success of the two Connecticut facilities, given their location in a remote, distressed rural corner of Maine.

While the Wampanoags and the Maine tribes have had problematic dealings with their respective state legislatures, the Narragansett Tribe of Rhode Island has encountered resistance to its gaming efforts from all fronts. In 1994, the governor initially refused to negotiate with the Narragansetts. After reversing his decision, the governor signed a compact with the tribe but the compact required municipal voter approval. Later that year, five separate Rhode Island municipalities voted down casino gambling within their jurisdictions. Several years later the Providence City Council agreed to put the casino gambling question on the November 1996 ballot. However, Providence Mayor Vincent A. Cianci, Jr. vetoed the measure. Since that time, the Narragansetts have been stymied in their ongoing effort to bring casino gaming to Rhode Island.

Initial estimates of the economic impact from their casino — which would be the third

Indian casino in the New England region — were called into question, further complicating the Narragansetts' attempts to establish a gaming facility. Revised figures for a Narragansett casino — albeit much smaller than Foxwoods or Mohegan Sun — point to a potential \$437 million in tribal gaming revenues, \$66 million in gaming taxes accruing to Rhode Island, and anywhere from 2,500 to 5,000 jobs created within five years. However, given opposition to gaming from both the state and municipal level, it is unclear whether the new proposed facility will be forthcoming. The Narragansett tribe expects the gaming issue to be on the state ballot once again in November 2000.

The Future

As the two Connecticut tribes continue to reap large revenues from their casinos, more and more tribes in New England and across the country are tempted to use gaming as a means for economic development. However, the main tool through which tribal gaming initiatives have grown may be under assault.

States have been trying to amend IGRA concerning the “scope of gaming” as presented in the legislation. States argue that they should not have to allow gaming on Indian reservations located within their state borders, if the state already prohibits gaming activity. Governors of states that have not legalized gaming have refused to negotiate compacts with interested Native American tribes. In those states with some form of legalized non-casino gambling (such as lotteries or “charity-night” gambling), state governments argue that they should not be forced to allow casino development on Indian reservations since such activity is prohibited elsewhere in the state.

In such situations, tribes usually cannot sue a reluctant state for not engaging in the compacting process, because of the sovereign immunity states enjoy under the Eleventh Amendment to the U.S. Constitution. The issue was at the center of the 1996 U.S. Supreme Court decision in *Seminole Tribe of Florida v. Florida*. In that case, the Seminole Tribe brought suit against the State of Florida for refusing to enter compacting negotiations. The state argued that since casino gambling is not permitted in the state, there was no requirement for the state to allow such activity on reservation property located within Florida. In the wake of the *Seminole* decision, tribal governments are arguing for changes to IGRA that would give them alternative recourse at the federal level if a state refuses to enter compacting negotiations.

Apart from “scope of gaming” there are other points of contention. For example, state governments are increasingly concerned over the attempts by some tribes to acquire non-contiguous, non-reservation property for the purpose of establishing gaming facilities. Reservation land is classified as either *trust* or *fee* land. Trust land is held by the federal government for use by a federally recognized Indian tribe and is therefore not subject to taxation by state authorities. Tribes with reservations located far from major metropolitan areas or with poor access to interstate highways may seek to move their gaming operations off reservation property. In doing so, they may attempt to purchase non-contiguous, non-reservation property and convert the land into trust land.

The trust land conversion issue has been at the center of the Wampanoag Tribe's proposals for establishing off-reservation Class II or Class III facilities in the greater New Bedford area. In their case, the Wampanoags' applications to purchase and convert land in New Bedford into trust property stem from the impracticality of constructing a casino or bingo hall on their Martha's Vineyard reservation. While the U.S. Department of the Interior currently acknowledges that a state governor's concurrence is essential before tribes can acquire non-contiguous land for gaming purposes, the issue is still controversial. State governors view such attempts as potential threats to state sovereignty, not to mention assaults on their property tax rolls.

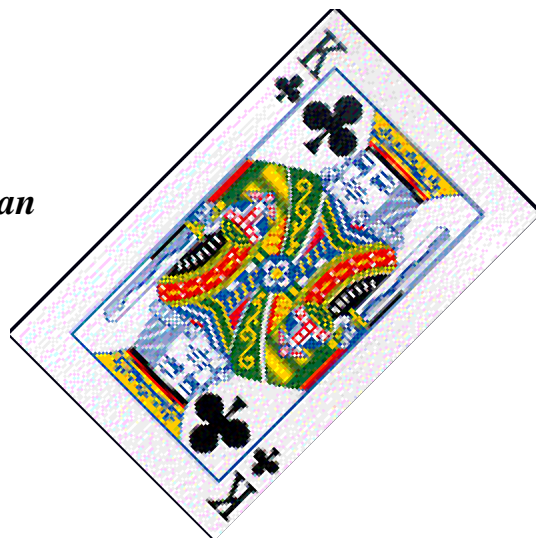
Finally, advancing gaming technology is also raising concerns. The involvement of Native American tribes with Internet gaming, including Internet bingo and other games, has become a controversial topic. Several smaller tribes, in particular the Coeur d'Alene of Idaho, have argued that the Internet allows them to attract substantially more partici-

pants than they could at a physical casino on their remote reservation. For such tribes, utilizing Internet technology is necessary for the economic viability of their gaming enterprises. This naturally aligns these tribes with other Internet gaming interests. At the same time, Internet gaming by Native American tribes also raises a broader set of issues than those covered in IGRA, including the ability of states and the federal government to regulate the Internet.

Given the enormous potential for revenues, job growth, and economic development, Indian casino gaming is likely to continue being a controversial issue in state-tribal relations. The future of Indian gaming in New England, and in the rest of the country, will depend on how states and tribes respond to the changing legal and socioeconomic environment surrounding this high-stakes industry.

--by Eric Henson
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Public & Community Affairs
Federal Reserve Bank of Boston



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ENTERPRISING

The National Housing Development Corporation: A New Nonprofit Focused on Preserving Affordable Housing

Despite the robust American economy, the need for affordable housing continues to grow. Today, this nation provides affordable housing for only one-fourth of those who need it, and there are few large-scale efforts to build more affordable housing to meet rising demand. Many experts have recognized this problem, including the National Housing Conference, which is calling for the creation of a bold new affordable housing production program. At the same time, the stock of existing affordable rental housing is diminishing through neglect, deterioration and, most important, the pending expiration of federal subsidies.

Beginning in the 1970s, the federal government entered into contracts with private owners to create affordable housing projects, in return for a long-term (25 to 30-year) commitment from the government to provide monthly rent subsidies for the tenants. The “Section 8” program, administered by the Department of Housing and Urban Development (HUD), is the primary vehicle for these subsidy dollars. The U.S. Department of Agriculture’s “Section 515” program has also built affordable rental housing in rural areas. While these subsidies are not expiring, some owners are interested in selling their properties to local nonprofits.

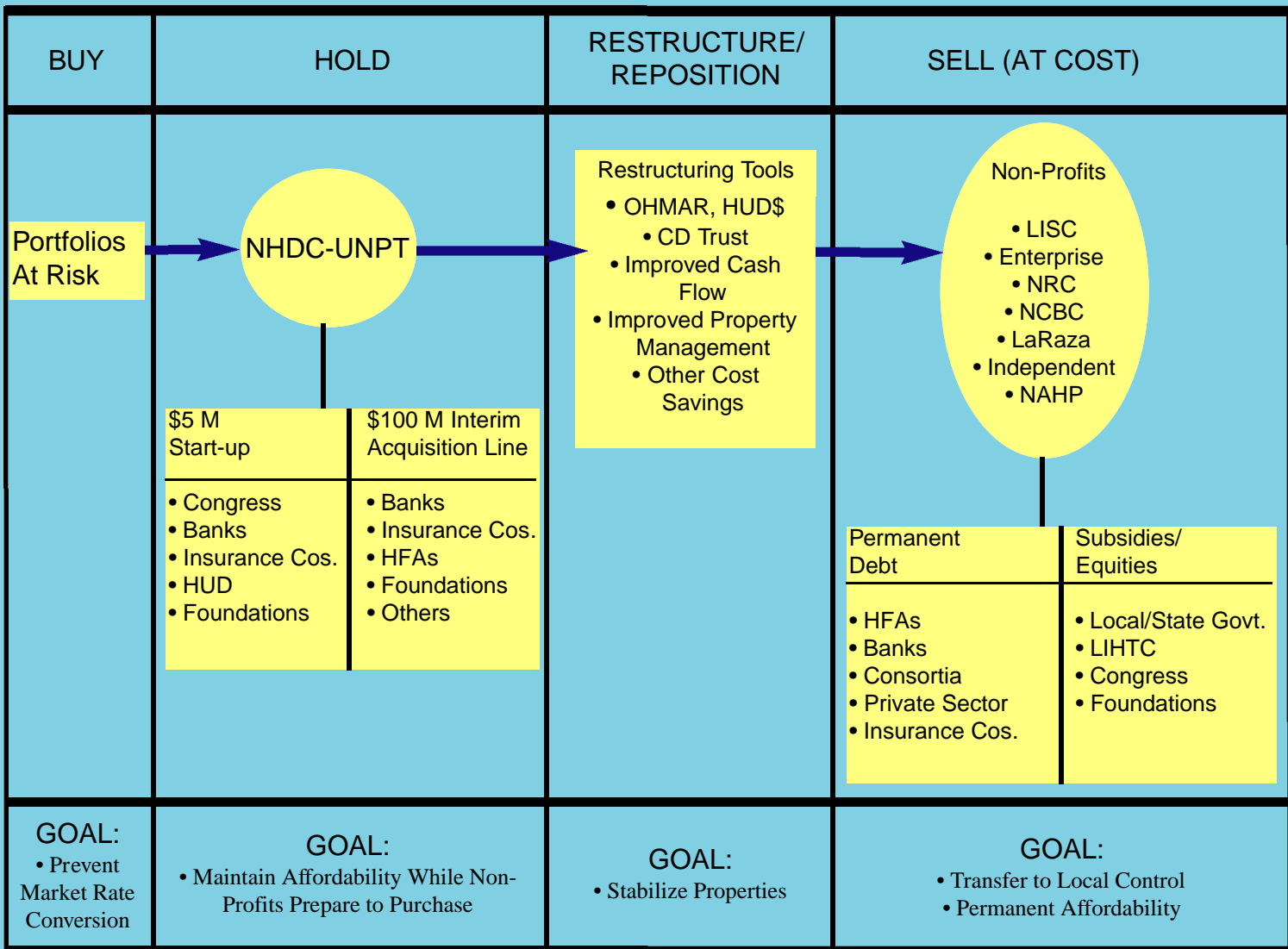
Now, throughout the nation, a large percentage of the Section 8 government rent subsidy contracts are expiring without the expectation of renewal. Over the next three years, the largest transfer of affordable real estate assets in history will take place, exposing upward of 800,000 affordable apartments, now regulated and subsidized by HUD, to market-rate conversion. The problem is particularly acute in California, where the largest number of properties is at risk. Unless a large-scale intervention takes place, these precious resources will be lost, as owners divest and profit-motivated investors move in.

The National Housing Development Corporation (NHDC) has been created to respond to this need. It is the first national intermediary of this type to emerge from the West Coast, growing out of an award-winning housing preservation program operated by the nonprofit Southern California Housing Development Corporation (SoCal Housing).

NHDC’s mission is to improve the quality of life for lower-income families through acquisition and preservation of the country’s affordable housing stock. It will partner with other not-for-profit preservation efforts. It will compete aggressively with the private sector to purchase large portfolios of these properties, restructure them financially, and sell them at cost to local nonprofits. Under nonprofit ownership, affordability can be maintained in perpetuity. NHDC’s goal is to help preserve a significant portion of the nation’s “at risk” properties, with an initial target of acquiring 60,000 units in three years.

The Congress has recognized the need and endorsed the NHDC model. Two million dollars has been earmarked in the 1999-2000 budget for NHDC’s initial seed capital. In addition, a national foundation has approved a seed grant for the first two years of operation.

The National Housing Development Corporation's (NHDC's) Process



NHDC's United National Preservation Trust

NHDC's program, also called the United National Preservation Trust (UNPT), will negotiate directly with portfolio owners for properties anywhere in the country. As illustrated in the diagram, it is designed as a large-scale acquisition/warehouse facility which will purchase larger portfolios of "at risk" affordable housing properties, concentrating on those beyond the reach of local nonprofits, for either financial or geographic reasons. NHDC will then reposition and stabilize the properties and finally disaggregate and sell off individual properties at cost to qualified local nonprofit organizations.

NHDC's holding period (estimated between 12 to 36 months) will enable the local nonprofits to assemble the necessary resources (tax credits, HOME funds, and local subsidies) to purchase the properties and prepare to assume property management functions. NHDC will retain a limited asset-management oversight role, retaining the ability to correct any future problems that might arise.

NHDC has developed its program based on the concept of "harmonious differentiation," through which NHDC will work with and complement housing, community development, and preservation efforts of other national intermediaries. Initial relationships are being negotiated with the National Council of La Raza and the Congress of National Black Churches. In addition, properties acquired by NHDC will be available for purchase by qualified affiliates of the Neighborhood Reinvestment Corporation, Local Initiatives Support Corporation, the Enterprise Foundation, National Association of Housing Partnerships, National Affordable Housing Preservation Associates, and others. (See the box on pages 16 and 17 for further information on complementary initiatives operated by these organizations.)

NHDC will also work closely with the National Council of State Housing Agencies (NCSHA) and its members at the state level, who will assist in identifying potential at-risk properties and may also provide property financing (see discussion below).

NHDC's Target Markets

In addition to the large number of existing low-income rental housing units that are immediately “at risk” of loss as a result of market rate conversion, other preservation targets for NHDC will include older assisted subsidy-dependent properties, conventional affordable apartments owned by real estate investment trusts (REITS), Low-Income Housing Tax Credit properties reaching lock-in expiration, and very large-scale neighborhood revitalization projects that are beyond the reach of local nonprofit capacity.

Because of the location of the majority of the expiring Section 8 properties, NHDC has targeted the Mid-Atlantic region, the Midwest and the West Coast as areas of initial concentration. However, it is expected that expiring Section 8 properties in New England will also be targeted at a later date.

NHDC's Acquisition and Financing Plan

NHDC will focus on properties that can be underwritten, purchased, and preserved under a “renewed affordability” paradigm, in which a combination of a reasonable acquisition price and value added through financial and operational restructuring, below-market financing, tax credits, local subsidies, and nonprofit ownership can achieve permanent affordability independent of future federal subsidies.

Now that the initial seed capital is in place, NHDC staff are actively working to identify and purchase its first at-risk portfolios. Timing is of the essence since the majority of the at-risk Section 8 projects will face subsidy expiration in the next three years. If these properties are lost to conventional buyers and converted to market-rate housing, the cost of replacing this inventory will be prohibitive.

Opportunities exist for banks and other financial institutions to provide seed capital to support NHDC's initial activities in their market areas, as well as acquisition and permanent financing for NHDC properties, eventually assumable by the ultimate owner/manager, the local nonprofit.

Once up and running, NHDC will earn income from transaction fees, special preservation funds known as Intermediary Technical Assistance Grants (ITAGs), cash flows from acquired properties, transfer fees to local nonprofits (based on a limited cost-reimbursement formula), and asset management fees. NHDC's projections indicate that it will achieve self-sufficiency in four years, based on an aggressive acquisition strategy.

To reach self-sufficiency, NHDC's financial projections show a need for \$5 million in seed capital (of which \$2 million has now been provided by the Congress). NHDC is in the process of raising the remaining seed capital from financial institutions, foundations, corporations, and future congressional appropriations.

A CRA Investment Opportunity

NHDC is developing an investment fund whereby participating financial institutions should receive CRA investment credit, via acquisition (and subsequent disposition) of existing affordable housing at risk of market conversion. Acquisitions will be structured via a risk-shared equity pool limited liability corporation (LLC) in which NHDC will be the managing member and participating financial institutions will be the equity investors and members. Investments are targeted for \$5 million increments, although smaller investments will be considered. The investment will have a projected holding period of three years and a maximum of six years, with a projected return of 5 to 8 percent, plus return of capital. The fund will make every effort to target its acquisitions to match the investors' service areas, broadly defined as states and regions where investors do business.

Additional Affordable Housing Preservation Contacts

LISC's Community Development Trust, Inc.: The Community Development Trust (CDT) is a for-profit real estate investment trust (REIT) created in 1998 by the Local Initiatives Support Corporation (LISC), a national community development intermediary. CDT acquires long-term, fixed-rate mortgages collateralized by affordable multifamily housing and other community development assets. CDT also invests equity in community development projects that meet CRA requirements. As a REIT, CDT can offer current owners of affordable housing a tax-deferred exchange that benefits property owners who have exhausted their tax benefits. Initial capital of \$31,750,000 was raised from 18 institutional investors including banks, insurance companies, and one community development financial institution (CDFI). For further information, contact Judd S. Levy, President and CEO, (212) 271-5099 or at jlevy@commdevtrust.com

National Affordable Housing Preservation Associates: The National Affordable Housing Preservation Associates (NAHPA) is a national nonprofit organized to promote the preservation of affordable multifamily housing in rural areas and small towns. NAHPA is currently completing acquisitions in Illinois and Vermont with a goal of acquiring 3,000 units over the next three years. USDA Rural Housing Service has affirmed a financing model for preservation properties to attract the participation of private lenders. NAHPA is now looking to build an organization and to establish partnerships with local and regional nonprofit organizations and housing authorities interested in acquiring and/or managing multifamily properties in rural areas. For further information contact Muriel Watkins, Executive Director, (202) 467-8544 or at murielwatkins@hotmail.com

National Association of Housing Partnerships' Housing Partnership Development Fund: The National Association of Housing Partnerships (NAHP) is composed of 60 regional nonprofit housing organizations in 32 states. NAHP's new affiliate, the nonprofit Housing Partnership Development Fund, will provide a loan facility for use by NAHP members, primarily for purchase of portfolios of HUD-assisted properties. The Fund will offer technical assistance with the financing that is needed for predevelopment costs. The Fund has received designation as a CDFI, so that bank investors can receive CRA credit and cash awards. \$1 million in investment has been raised toward a goal of \$3 million. For further information contact Kathy Farrell, (617) 720-1999 ext.204 or at farrell@nahp.net

(continued on next page)

However, for NHDC to have the flexibility to respond to areas of greatest need, 25 percent of the funds will be reserved for use in any location. As soon as properties are repositioned and stabilized, and the qualified local nonprofit is in place, NHDC will sell or transfer the property to the qualified local nonprofit. At that time, the investors' equity capital will be repaid. As an alternative, and at each individual investor's discretion, equity capital returned can be recycled back as a new capital contribution to acquire future properties on the same basis. If there is no otherwise viable affordability-oriented transaction, as a last resort the property can be sold at market value.

NHDC Personnel

While NHDC is a new national intermediary, NHDC staff have a long history in affordable housing preservation. Jeff Burum, NHDC's executive director, was the founder of Southern California Housing Development Corporation (SoCal Housing), a large and successful regional non-profit that focuses on preservation of affordable rental housing in Southern California. Under Burum's seven-year stewardship, SoCal Housing preserved over 3,000 units of affordable housing with an asset value exceeding \$130 million. Other key staff members from SoCal Housing are also involved with NHDC. Sebastian Sterpa, former chairman of the California Housing Finance Agency, will serve as the initial chairman of the Board of Directors. Other members of NHDC's Board are being recruited and include key national leaders in the nonprofit, philanthropic, private, and public sectors.

In addition, NHDC has assembled a team of outside experts to assist with acquisitions, organizational planning and development, and public finance. Team members include Rick Johnston, Managing Director of Public Finance for US Bank/Piper Jaffray, the authors of this

Additional Affordable Housing Preservation Contacts

Neighborhood Capital Corporation (NCC): The Neighborhood Capital Corporation (NCC) was formed in January 2000 by members of the Multi-Family Housing Initiative of Neighborhood Reinvestment Corporation (NRC). The NCC membership, composed of the multifamily organizations in the NeighborWorks Network, owns and operates 15,000 units of multifamily housing. NCC's primary function will be aggregating capital for the timely acquisition of affordable multifamily housing for its member organizations. NCC members plan to increase their combined portfolio by 10,000 units by the end of 2003. NCC intends to work with other organizations, including National Housing Development Corporation (NHDC), National Housing Trust/ Enterprise Preservation Corporation (NHT/E), and National Association of Housing Partnerships (NAHP). For further information, contact Bill Sullivan, Rocky Mountain Mutual Housing Association, Inc. 1550 Park Avenue, Denver, CO 80218, (303) 863-8651 ext.211 or at sullivanb@rmmha.com

NHT Enterprise Preservation Corporation: National Housing Trust is a nonprofit intermediary located in Washington, D.C. The Trust was founded in 1986 and is dedicated to the preservation of existing multifamily affordable housing. In 1999, the Trust and the Enterprise Foundation launched the NHT Enterprise Preservation Corporation, which will purchase real estate from owners of multifamily housing, primarily targeting markets with insufficient local nonprofit capacity or interest to efficiently complete a transaction. This new nonprofit entity plans to acquire 5,000 apartments over the next five years. In general, NHT/Enterprise plans to focus its activities in the Mid Atlantic, South, and Midwest. For further information contact Scott Kline, Vice President for Acquisitions, (202) 333-8931 or at skline@nhtinc.org, or you can visit NHT's website at www.nhtinc.org

For additional information on NHDC, contact:
National Housing Development Corporation
8265 Aspen Street,
Rancho Cucamonga, CA 91730
phone: (909) 291-1400; e-mail: jburum@nhdc.org; Website: www.nhdc.org

article, and David Smith, founder and President of Recapitalization Advisors, one of the nation's leading specialists in the HUD inventory.

The ultimate goal of NHDC's efforts is to help local communities attain greater control over one of their most precious assets — the housing stock that shelters lower-income families and seniors. Without a doubt, preserving this housing stock is a huge undertaking, one that, in order to be successful, will require coordination, cooperation, considerable expertise, and strong financial support. Management fees can also contribute to the sustainability of local nonprofit operations, providing additional capital to address other community needs.

Through its working relationships with other preservation-oriented agencies and through its Board of Directors, NHDC is positioned to make a major difference in the preservation of the nation's affordable housing stock. NHDC's success will directly translate into success for the local nonprofits that wish to play a role in the preservation of affordable housing in their communities.

***--by Kathy Kenny* & John Trauth
Consultants to the National Housing Development Corporation***

**** Consultant to the Federal Reserve Bank of San Francisco***

AROUND NEW ENGLAND

Building Materials Cooperatives in New England

New England's landscape is dotted with picturesque old buildings, some of which are over 100 years old. While our homes are architecturally interesting, for homeowners, renovation of these buildings can be hugely expensive. Low-income homeowners especially, require creative solutions to finance home repair costs. One such solution is found in the building materials exchanges that have sprung up along the East Coast. These centers collect new and used building materials and resell them to low-income homeowners at reduced prices. As an added benefit, the materials stay out of clogged landfills.

The grandfather of all building materials suppliers is the Loading Dock in Baltimore, Maryland. This organization is housed in a 21,000 square foot warehouse and serves over 5,000 needy families per year. The project began 15 years ago when an enterprising contractor, Charlie Dobell, began collecting materials from affordable housing construction projects to save on materials costs for other projects. He also began to collect surplus materials from lumberyards and hardware stores. Eventually, he ran out of room in his garage. He formed a partnership with a developer and together they found a condemned warehouse for storing the materials.

Because their building materials are not available in large enough quantities to serve other non-profit builders, the Loading Dock targets individual household projects. They market their organization through first-time homebuyer education programs. Those who qualify as low-income, according to HUD standards, are able to use the warehouse. Prices are generally about 50 percent of retail. Since 1990 the Loading Dock has generated enough revenue from these sales to remain self-supporting.

To increase the supply of materials, the Loading Dock seeks out manufacturers. When an organization donates materials to a 501c(3) non-profit, it can take a tax deduction for the full value of the materials. For instance, a mismeasured window, an old kitchen cabinet or the last two boxes of tile in a discontinued color can be written off by the donor. At the same time, perfectly good materials are used instead of being dumped into a landfill. Companies also save on disposal and storage fees. Almost 70 percent of the materials at the Loading Dock are new items donated by corporations. Homeowners donate the other 30 percent.

The Loading Dock is an unqualified success. Loading Dock staff receive calls from around the country asking for more information about their program. In five years they received over 800 calls from people wanting technical support for their projects. Hope Casina, the former director, spread the word by writing a book about the Loading Dock's experience and forming a national assistance center, now called the Reuse Development Organization (REDO).

In 1996, a series of workshops were held in Baltimore for people seeking to start their own versions of the Loading Dock. Two New England groups were among the workshop participants, and this in turn led to new building material supply centers.

Boston, Massachusetts: The Building Materials Resource Center

In Boston, the Building Materials Resource Center (BMRC) was founded after the President of the Board of Directors of the Boston Building Materials Cooperative (BBMC) visited the Loading Dock. The BBMC had been established almost 15 years before by a group of mostly upper-middle-class homeowners who pooled their resources to get better prices on home improvement supplies. While the enterprise was successful, the BBMC realized that their prices were still not affordable to lower-income members of their community. In an effort to provide assistance, they formed the Educational and Charitable Fund. For the first few years the fund provided classes in such home improvement skills as hanging a window, installing a door, and completing basic plumbing projects. In 1993-94 the fund launched the BMRC, mainly to benefit lower-income homeowners.

They started very small, in trailers on the parking lot behind the BBMC. According to Program Manager Jorge Casas, "It was very very difficult to do the program then. It was freezing cold in the winter and as hot as an oven in the summer. But even under those conditions, people were donating materials, and even more importantly people were buying them."

Because of this healthy supply and demand for materials, the BBMC launched a capital campaign to build a warehouse for displaying materials in a comfortable atmosphere for their customers. Through donations from Associated General Contractors of Massachusetts, foundations, and some of the largest contractors in the state, BMRC was able to raise \$150,000. The City donated the parking lot behind the BMRC at 100 Terrace Street, where the trailers were located, as a site for the warehouse.



Clients inspect kitchen cabinetry at the Building Materials Resource Center (BMRC) in Boston's Roxbury district.

Prospective homeowners learn about the BMRC primarily through homebuyer education classes offered throughout the state. BMRC staff members make presentations to classes and teach the importance of home inspection. The Center also receives many referrals from customers.

Unlike the Loading Dock, which receives 70 percent of its materials from manufacturers, private individuals donate over 90 percent of the materials for the BMRC. On one January day, the materials included a new mahogany kitchen cabinet set and a one-year old washer/dryer set, among other top-quality items.

Recently, BMRC made an agreement with the City of Newton that may further augment their supply of materials. Under the agreement, WasteCap of Massachusetts will provide information to Newton homeowners about BMRC when they apply for a

building permit. This pilot program in reducing solid waste will be funded by a grant from the Office of Environmental Affairs.

The BMRC charges about 30 percent of retail for its materials. This generates about 58 percent of the operating revenue. To make up the difference, the Center uses grants and donations from private individuals. The goal is to generate 80 percent of revenue from sales through increased volume, while keeping prices low.

In addition to running the warehouse, the BBMC and the BMRC hold classes on home improvement projects. They also provide home consultations to homebuyers who want to assess their home repair needs.

Grey and Sanford, Maine: Maine Housing and Building Materials Exchange



Some of the products available for use by low-income homeowners at the Maine Building Materials Bank in Grey, Maine.

To the north, the Maine Housing and Building Materials Exchange has a different history. It began in 1988 as a means to assist low-income families in maintaining their properties to safe and decent standards by actively soliciting good quality surplus or used building materials. Initially this center was supported by the County of Cumberland. There are currently two sites, one in Grey and the other in Sanford, Maine.

Unlike Boston, where the mix of rich and poor creates an opportunity to collect from individuals, Maine is predominately rural with limited opportunities for private donations. The Exchange has solved this problem by identifying several generous corporate donors. The largest is Harvey Industries from Waltham, Massachusetts. Harvey Industries is a custom manufacturer of windows and doors. They have four manufacturing facilities and about 1,000 employees. According to Fred Macdonald of Harvey, the relationship began five years ago when the Exchange approached the company. “They gave me the statistics of what the average person in Maine earns, and what the housing costs were. It was obvious that most people couldn’t afford to do renovations.”

Since all of Harvey’s products are custom made, they sometimes produce, for instance, a mismeasured or scratched window. For the past five years, these new windows have been shipped to the Maine Housing Exchange. This year donations in product will total about one half million dollars. In the past these goods would have been thrown away.

Generous corporate donors and grants from the United Way have helped Maine Housing remain financially viable. In fact, they are able to cover almost 100 percent of operating costs through the sale of goods. As a result, United Way funds are available for other programs that the Center runs. These include a grant program in which Maine

Housing donates materials to very low-income people in dire straits. One such case was a family who lost their home in a fire. Their insurance company gave them \$25,000 for the loss. In order to rebuild they have had to ask for donated materials and do the construction themselves. The Maine Housing Exchange has donated \$1,400 in materials to this family.

Bridgeport, Connecticut: The Materials Exchange

To the south is one of the newest and smallest building materials centers – the Materials Exchange in Bridgeport, Connecticut. This center began operations six years ago when three contractors came up with the idea of sending used materials to Bridgeport. The contractors were renovating houses in Fairfield County, removing materials such as kitchen cabinets which could be reused. Given Bridgeport's poverty levels, they felt that there must be a need for these products.

The Materials Exchange has only one part-time employee, Bill Kruppenbacher, and a budget of only \$50,000 per year. The Exchange services several hundred individuals, three dozen Section 8 landlords, and other nonprofits, and receives approximately 400 donations per year.

Until two years ago the Exchange was housed in an abandoned warehouse, like other fledgling centers. However, in 1998 the roof caved in, and the center lost two trucks and 95 percent of their inventory. With the assistance of a local community development organization, the Exchange has found a new location and reopened its doors. Presently, the organization is trying to begin a fundraising drive to make capital and operational improvements.

Impact

To date, the Loading Dock estimates that it has saved low-income housing and community projects \$6.7 million dollars through its programs and rescued 33,000 tons of building materials from landfills. While the New England centers do not keep these types of statistics, it is clear that local communities are also benefiting from reusing materials. While each of the centers has had to adapt to their community circumstances, they have all fulfilled the same mission — to keep good materials out of landfills and put them into the hands of the people who need them the most.

*--by Kathleen Gill
Public & Community Affairs
Federal Reserve Bank of Boston*

If you would like more information about the building materials cooperatives highlighted in this article, or would like to donate suitable materials you can contact them through the following means:

Connecticut:

The Materials Exchange
c/o Bill Kruppenbacher
62 Cherry Street
Bridgeport, Connecticut 06605

Massachusetts:

Building Materials Resource Center
100 Terrace Street
Roxbury, Massachusetts 02120
phone: (617) 442-2262

Maine:

Maine Housing & Building Exchange
169 Lewiston Street
Grey, Maine 04039
phone: (207) 657-2957

61-B Lebanon Road
Sanford, Maine 04073
phone: (207) 324-4574

website: www.mhbme.org

COMPLIANCE CORNER

The Impact of the Gramm-Leach-Bliley Act on Banks, Community Groups and Consumers

Last fall, the old Depression era banking laws met their demise when, on November 12, 1999, President Clinton signed into law the Financial Services Modernization Bill, also known as the Gramm-Leach-Bliley Act. With the new Act, the Congress effectively repealed certain sections of the Glass-Steagall Act of 1933, which generally prohibited the commingling of the banking, securities, and insurance industries. Effective March 11, 2000, the Act overhauls this country's financial system, as banks, insurance companies, and securities firms will be free to enter into each other's businesses. The resulting changes will affect not only financial institutions but also community groups and individual consumers.

The following is a brief review of some of the highlights of the Act as they affect the rights and practices of bank holding companies, banks, community groups, and individual consumers.

Impact on Bank Holding Companies and Banks

Expanded Affiliations and Activities

One of the most notable effects of the Gramm-Leach-Bliley Act (the Act) is the extended latitude it affords bank holding companies (BHCs) regarding their affiliations and activities. Both the Glass-Steagall Act and the Bank Holding Company Act (BHCA) restricted BHC affiliations with insurance and securities firms. The Gramm-Leach-Bliley Act removes those restrictions and allows a BHC to become a "Financial Holding Company" (FHC), enabling it to affiliate with a wide variety of financial institutions, including securities and insurance companies. Within the Act, the Congress included an expanded version of the BHCA laundry list of permissible activities. For activities not included on the list, the Act gives discretion to the Federal Reserve Board (Board) and the United States Treasury to permit FHCs to engage in any activity or to acquire a company engaged in any activity that meets one of the following guidelines:

- (1) The activity is "financial in nature or incidental to such financial activity," or
- (2) The activity is "complementary to a financial activity and does not pose a substantial risk to the safety or soundness of depository institutions or the financial system generally."

There are limitations, however. A BHC may not expand its activities and become an FHC unless all of its subsidiary banks are well capitalized and well managed. Before it can become an FHC, the BHC is required to file with the Board a declaration of activities in which it seeks to engage and a certification that the subsidiary banks meet the conditions required by the Act.

Operating subsidiaries of national banks will be permitted to sell any financial product and to underwrite any financial product (except insurance or real estate development). These institutions must also be well capitalized and well managed in order to engage in any of the new activities permitted by the Act. Many states have also created companion laws permitting operating subsidiaries of other banks to engage in these expanded activities.

CRA Sunshine Requirements

The Gramm-Leach-Bliley Act requires public disclosure of certain Community Reinvestment Act (CRA)-related agreements between banks and non-governmental entities (including community groups) and persons. The Act's so-called "CRA Sunshine Requirements" mandate that any written agreement entered into by a bank or affiliate with, for example, a community group must be fully disclosed by each party to the public and the appropriate federal banking agency if the following conditions are met:

- The community group has submitted comments to a federal agency on the bank's CRA record or discussed the bank's CRA record with the regulator and
- The written agreement requires cash payments, grants or other consideration greater than \$10,000 per year or more than \$50,000 per year in loans; or
- The appropriate federal banking agency determines that the agreement pertains to a matter that may have a material impact on the assignment of a CRA rating or an application.

The Sunshine Requirements do not apply to individual mortgage loans, specific contracts, loan commitments, or extensions of credit to individuals, businesses, farms, or other entities, if the funds are extended at a rate that is not substantially below market rate and if the loan purpose does not include re-lending of the borrowed funds to other parties.

The Act prescribes penalties for failure to comply with this section. If a contracting non-governmental entity (e.g., community group) or an individual willfully fails to comply, the agreement will be unenforceable after the offending party has been given notice and a reasonable time to perform and comply.

CRA and Small Bank Regulatory Relief

The Act also provides some regulatory relief to small banks (assets of \$250 million or less) regarding the frequency of CRA examinations. A small bank with an outstanding rating on its most recent CRA examination will only be subject to a CRA examination every five years. If the bank's most recent rating is satisfactory, it will be examined every four years. There may be more frequent examinations for small banks seeking to merge with other banks or thrifts.

Impact on Community Groups

CRA-Related Restrictions

Restrictions imposed by the Act require that financial institutions take CRA more seriously than ever before. Community groups concerned about future activities of banks with less than satisfactory CRA performances should know that a BHC will be prohibited from becoming an FHC engaging in new activities unless all of its bank subsidiaries have CRA ratings of satisfactory or better at the time a certification is filed.

If subsequent to becoming an FHC, the FHC's subsidiary is rated less than satisfactory, the FHC is prohibited from engaging in any additional activities authorized by the Act. The Act also prevents FHCs from circumventing the Act by merging with or acquiring companies already engaged in new powers permitted under the Act.

The prohibitions would no longer apply once the subsidiary obtained a satisfactory or better rating. Note that these restrictions also apply to subsidiaries of national banks when the national bank or its bank or thrift affiliate falls below satisfactory.

Impact on Consumers

One-Stop Shopping

As a result of this overhaul of the country's financial system, one-stop financial shopping may be in store for consumers. In the future, as banks, insurance companies and securities firms merge and/or expand their product lines, consumers will be able to open bank accounts, purchase insurance, trade securities, obtain credit cards, and pay bills, all through the same company.

The Act will have some more immediate effects on consumers, particularly with respect to privacy rights. Under the new law, financial institutions have an affirmative obligation to respect the privacy of their customers and to protect the security and confidentiality of the customers' nonpublic personal information. To protect the privacy of individuals, the Act imposes several new restrictions on FHCs and their affiliates.

First, financial institutions must establish and annually disclose to all customers their privacy policies and practices in writing or in electronic form. Specifically, they must disclose to customers their procedures for sharing personal information with both affiliated and non-affiliated third parties. Second, the Act provides consumers with the right to "opt out" or prohibit financial institutions from sharing or selling personal information with non-affiliated third parties. (The financial institution may still share this information with its affiliates). Third, the Act requires regulators to establish standards ensuring the security and confidentiality of customer information for those financial institutions under their respective jurisdictions. Fourth, financial institutions are prohibited from transferring credit card or account numbers to third-party marketers.

ATM Surcharges

Finally, the Act also addresses ATM surcharge disclosures. Under the new law, the bank must disclose any ATM surcharge in two forms. First, the bank must post in a prominent and conspicuous location at the ATM terminal any ATM fee assessed. Second, the bank must disclose the fact that there is a fee and the dollar amount on the ATM screen or on a paper notice generated by the machine after the transaction is initiated and before the consumer is irrevocably committed to completing the transaction. Banks that demonstrate that their ATM machines are technically incapable of generating all of the required notices are required to upgrade their equipment by December 31, 2004.

--by Carol Lewis

Bank Examination

Federal Reserve Bank of Boston

The Gramm-Leach-Bliley Act extends far beyond the points discussed in this article. For further information, readers can access the full text of the Act on the Web at <http://www.house.gov/banking/s900lang.htm>