

OFFICE OF HEARINGS AND APPEALS  
BOARD OF INDIAN APPEALS

## Interior Board of Indian Appeals

AUGUST 16, 2010

On July 15, 2010, The Connecticut Coalition for Gaming Jobs (CCGJ) filed a Notice of and Request for Reconsideration in the above referenced matter. The request was filed pursuant to 25 C.F.R. §83.11 of the acknowledgment regulations, and was filed

within the 30-day shortened time period provided by the court approved Stipulation and Order for Settlement (Stipulation) in Shinnecock v. Salazar, No. CV-06-5013 (E.D.N.Y. May 26, 2009) See 75 Fed. Reg. Lt 34., 765.

On July 22, 2010, the Board in its Notice of Receipt of Timely Requests for Reconsideration, Order Consolidating Proceedings, Order Concerning Briefing on Standing and Merits and Notice of Ex Parte Communications, requested that in addition to filing a detailed request of reasons supporting its request for reconsideration, CCGJ and the other requesting party also file a brief on their interested party status. Thus, CCGJ submits this brief to the Board to supplement its original Notice of and Request for Reconsideration.

**The Connecticut Coalition for Gaming Jobs fits the definition of an interested party established in 25 C.F.R. § 83.1**

“Interested party” is defined in 25 C.F.R. § 83.1 as follows:

[A]ny person, organization or other entity who can establish a legal, factual or property interest in an acknowledgment determination and who requests an opportunity to submit comments or evidence or to be kept informed of general actions regarding a specific petitioner. “Interested party” includes the governor and attorney general of the state in which a petitioner is located, and may include, but is not limited to, local governmental units, and any recognized Indian tribes and unrecognized Indian groups that might be affected by an acknowledgment determination.

The Board has previously determined that the phrase “legal, factual or property interest in an acknowledgment determination” as “encompassing interests that would (or might) be affected by the change in status of an Indian group resulting from an acknowledgment determination.”

In re Federal Acknowledgment of the Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan, 33 IBIA 291, 298 (1999). As stated in, In re Federal Acknowledgment of the Nipmuc Nation, 41 IBIA 96, 101 (2005). “In other words, to be an interested party, one must have a stake in the outcome of an acknowledgment determination.”

The Connecticut Coalition for Gaming Jobs has a tremendous economic stake in the outcome. Should the Final Determination stand, CCGJ would suffer immediate harm. Gateway Casino Resorts, The Nation’s partner has even acknowledged this immediate harm publically. “Gateway’s representatives stated that a nine month delay in recognition was worth three quarters of billion dollars to Connecticut’s casino industry” Report by Charles Lane on July 22, 2010 WSHU Public Radio (See <http://www.wshu.org/news/story.php?ID=8018>).

The Nation and its non-tribal investors have repeatedly expressed one goal, the building of a Casino in metropolitan New York, this is evident by the myriad of articles previously provided to the board.

The Connecticut Coalition for Gaming Jobs (CCGJ) is a coalition of businesses and individuals who pay taxes in Connecticut. CCGJ was founded in 2010 to primarily protect the employees, businesses and taxpayers that depend on the on gaming in Connecticut.

The Connecticut Coalition for Gaming Jobs interests are aligned with the 18,000 Connecticut residents employed by Connecticut Casinos and the 9,000 residents employed by businesses that provide goods and services to the Casinos. In addition to those 27,000 people in Connecticut will be irreparably harmed by the recognition of the Shinnecock Indian Nation<sup>1</sup>, every single Connecticut taxpayer will feel the financial

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<sup>1</sup> The effect on the Connecticut economy will be staggering, both publically and privately. 90% of Connecticut’s towns have a small or mid-sized business employing local residents that do business with

burden of this decision<sup>2</sup>. This includes CCGJ itself, as a limited liability company paying taxes in Connecticut.

**The Connecticut Coalition for Gaming Jobs fits the definition of an interested party established in Lujan v. Defenders of Wildlife.**

The Supreme Court in Lujan v. Defenders of Wildlife, 504 US 555 (1993), clearly defines the standard to be an interested party.

According to the Court in Lujan, in order to be an interested party, a party to the case must meet the following four criteria. The party must suffer "An 'injury in fact'—an invasion of a legally protected interest which is (a) concrete and particularized and (b) 'actual or imminent, not conjectural' or 'hypothetical,'. Second, "There must be a causal connection between the injury and the conduct complained of—the injury has to be 'fairly . . . trace[able] to the challenged action of the defendant, and not . . . th[e] result [of] the independent action of some third party not before the court". Third, it must be "likely," as opposed to merely "speculative," that the injury will be "redressed by a favorable decision." Finally, the party invoking federal jurisdiction bears the burden of establishing these elements. Lujan v. Defenders of Wildlife, 504 US 555 (1993), at 561

In this case, CCGJ meets all of the following requirements. First, with the recognition of The Nation and the subsequent construction of a casino in metropolitan New York, there will be an immediate harm to CCGJ and its members in the form of lost jobs to casino employees, lost contracts to casino contractors and lost revenue to the State

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Connecticut's Casinos.. Approximately 50% of the slot royalties are generated from customers from other states. Should a casino be built that will decrease visitors to Connecticut Casinos the revenue lost to the state will be devastating.

<sup>2</sup> Last year, the State of Connecticut collected \$377 million in revenue from the two Casinos. Connecticut's cities and towns have received more than \$5 billion in slot machine royalties since the Casinos opened the slot revenues have helped reduce taxes and pay for services such as schools and public safety.

of Connecticut and its towns that will require increased taxes or decreased services to Connecticut taxpayers.

The building of The Nation's casino is not hypothetical nor is it speculative; it is a definite and imminent reality. This is evidenced by the Nation's recognition process being entirely funded and lobbied for by Gateway Casino Resorts, The Nation's non-tribal fiduciary. It is further evidenced by the history of law suits that the Nation and their non-tribal investors have been a part of over the last decade; finally, this is evidenced by the public statements of the tribe in the evidence previously submitted to the board in its original brief.

Secondly, there is a direct connection between the recognition and the imminent harm. Once the recognition occurs, The Nation will construct their casino and decimate the Connecticut gaming industry.

The Connecticut Casino Industry has been competitive because they are uniquely positioned between New York and Boston. This location allows them to draw from two major metropolitan areas, thus bringing in billions of dollars into the State's economy. With the construction of a New York metropolitan based casino, the Connecticut Casino industry will lose its New York market share and will suffer dramatically. The Construction of The Nation's casino puts billions in tax revenue and every one of the 27,000 casino jobs in jeopardy.

Finally, there is no other means of redressing this imminent harm than a favorable decision on this request.

Therefore, for the reasons stated above, it is imperative that the Board determine that the Connecticut Coalition for Gaming Jobs is an interested party that will suffer an imminent actual harm upon the recognition of the Shinnecock Indian Nation.

Respectfully,

The Connecticut Coalition for Gaming Jobs

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## **CERTIFICATE OF SERVICE**

**I hereby certify that service was provided to the following individuals or parties of record via US Mail on this the 16th Day of August, 2010.**

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