



**Michigan Gaming Control Board**

# **Indian Gaming Section Annual Report to the Executive Director**



**Calendar Year 2011**

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Calendar Year 2011

Michigan Gaming Control Board  
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[www.michigan.gov/mgcb](http://www.michigan.gov/mgcb)

April 15, 2012

Mr. Rick Kalm  
Executive Director

On behalf of the Michigan Gaming Control Board, Indian Gaming Section, I am pleased to submit to you the Indian Gaming Section Annual Report in accordance with the Indian Gaming Section's policies, procedures, and reporting requirements for the period of January 1, 2011, through December 31, 2011, which includes a summary of significant activities and operations.

2011 proved to be a solid year for Indian Gaming in Michigan with net win computed based on the two percent payment total reaching a historical record. This increase in net win has increased the responsibilities of our section.

During the period from January 1, 2011, through December 31, 2011, the Indian Gaming Section continued its oversight efforts of the Tribal-State Class III Gaming Compacts through the conduct of inspections, audits, and observations. In fulfilling our duties and responsibilities, we have continued to receive invaluable assistance from the Michigan Attorney General's office and the Office of the Governor's Legal Counsel for Native American Affairs.

As always, we strive to increase positive communications with each of the tribes and encourage tribal voluntary compliance with the compacts on a government-to-government basis.

Sincerely,

David Hicks  
Section Manger

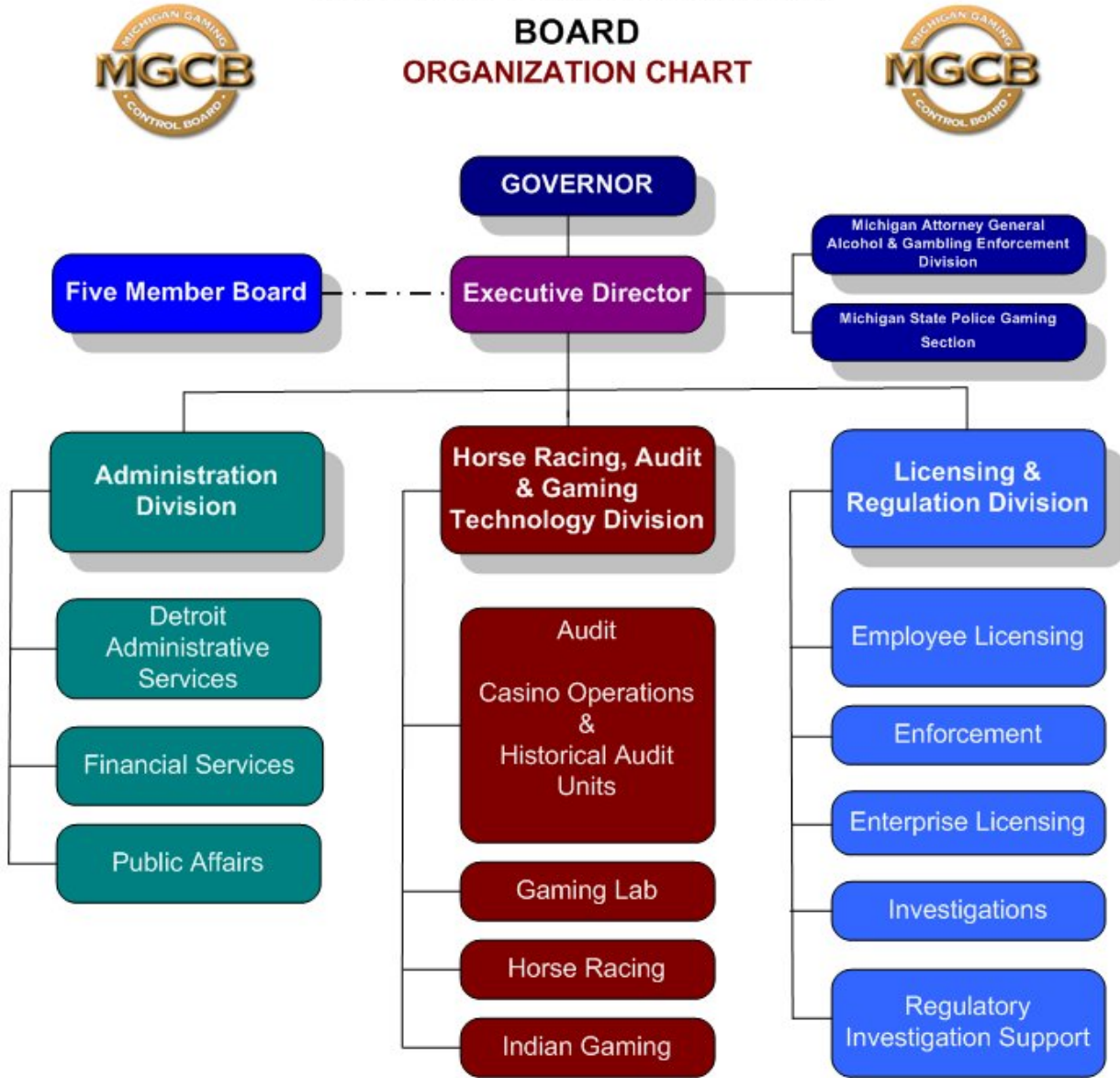


## TABLE OF CONTENTS

Section	Page
Michigan Gaming Control Board Organization Chart	1
Overview	2
Indian Gaming Regulatory Framework	3
Indian Gaming Section Mission, Personnel, Source of Funding, Total Expenditures	4
Oversight Accomplishments	5
Compact Interpretation Differences and Issues	10
Tribal Casinos in Michigan - Map	15
Michigan Tribes with Compacts, Casinos, and Number of Slot Machines	16



**MICHIGAN GAMING CONTROL BOARD ORGANIZATION CHART**





## Overview

Based on analysis of 2011 two percent payments to local units of state governments, Indian gaming in Michigan recorded a minimum net win of \$1.4 billion surpassing historical totals. This increase can be attributed largely to the opening of the Gun Lake Casino in Wayland and a second Pokagon Band of Potawatomi Indians facility in Hartford. Further historical data will be required to determine if this increased competition will lead to further expansion of the Indian Gaming net win totals in the future or whether we may see a cannibalization type effect from the existing facilities as the new facilities increase gamblers' options and affect the spending of their discretionary dollars.

Except for the possibility that the Pokagon Band of Potawatomi Indians may be positioned to open their third facility and all tribes may expand their gaming offerings to include online gaming, we do not foresee any additional expansion of Indian gaming in the coming year. We continue to closely monitor the events surrounding several proposed developments located throughout the state that have been widely publicized in various media forums.



## Indian Gaming Regulatory Framework

The federal government passed the Indian Gaming Regulatory Act of 1988 (IGRA), which authorizes Indian tribes to operate casino gaming on Indian tribal lands. The justification for the passage of IGRA was that it would create economic development and self-sufficiency on Indian tribal lands, meet tribal requests for authorized casino gaming, and ensure that state governments would be involved in oversight of Class III gaming operations. Before a Tribal-State Gaming Compact becomes effective, IGRA requires the Office of the Secretary, United States Department of the Interior, to approve the compact and publish its approval in the Federal Register.

The State of Michigan has entered into Tribal-State Gaming Compacts (written agreements between tribal governments and the state) with twelve Native American tribes. These twelve compacts have produced 22 tribal casinos located throughout the state. *Please see the map of Tribal Casinos in Michigan in 2011 and listing of Michigan Tribes with Compacts, Casinos, and Number of Slot Machines located at the end of this report.* The Compacts provide that the regulation of Indian casino gaming is the responsibility of the tribes. Michigan recognized the tribes as individual sovereign nations and, therefore, has no regulatory authority. Although the State of Michigan does not regulate Indian casino gaming, the state does have an oversight authority over compliance with the Tribal-State Gaming Compacts' provisions.

The Indian Gaming Oversight program was originally established within the Office of Racing Commissioner, Department of Agriculture. On November 21, 2002, the governor of Michigan officially designated and authorized the executive director of the Michigan Gaming Control Board, and his designees, agents, and employees, as the State of Michigan's representative to conduct the state's authorized inspections of Class III gaming facilities and records, pursuant to and in accordance with provisions of the various Tribal-State Compacts for the conduct of Class III gaming on Indian lands in Michigan. This oversight authority includes conducting financial and compliance audits and inspections of the tribal casinos' operations to determine the extent of compliance with the Tribal-State Gaming Compacts and related Consent Judgments.

Board members of the MGCB have no oversight role or authority over the Tribal-State Gaming Compacts.

Cooperation between the state and the tribes is imperative in protecting both the state and tribal interests and ensuring public confidence in the integrity of tribal gaming within the state.



## **Mission, Personnel, Source of Funding, Total Expenditures**

The Indian Gaming Section was created within the Michigan Gaming Control Board to provide oversight of Class III gaming operations as required in the Tribal-State Compacts. The Indian Gaming Section has six budgeted full time equivalents consisting of five staff auditors and an Audit Manager. The Indian Gaming Section reports to the Deputy Director of Horse Racing, Audit, and Gaming Technology. *Please see Michigan Gaming Control Board Organization Chart on page 1.*

The Tribal-State Compacts outline that the tribes shall make annual payments to the State to be applied towards the costs incurred for carrying out functions authorized by the terms of the compacts.

Subject to certain exclusivity provisions, the Tribal-State Compacts and related Consent Judgments stipulate that a percentage of annual net win derived from all Class III electronic games of chance, is to be paid to the Michigan Strategic Fund (MSF) or Michigan Economic Development Corporation (MEDC). The MEDC provides funding to the Indian Gaming Section for oversight related to these payments.

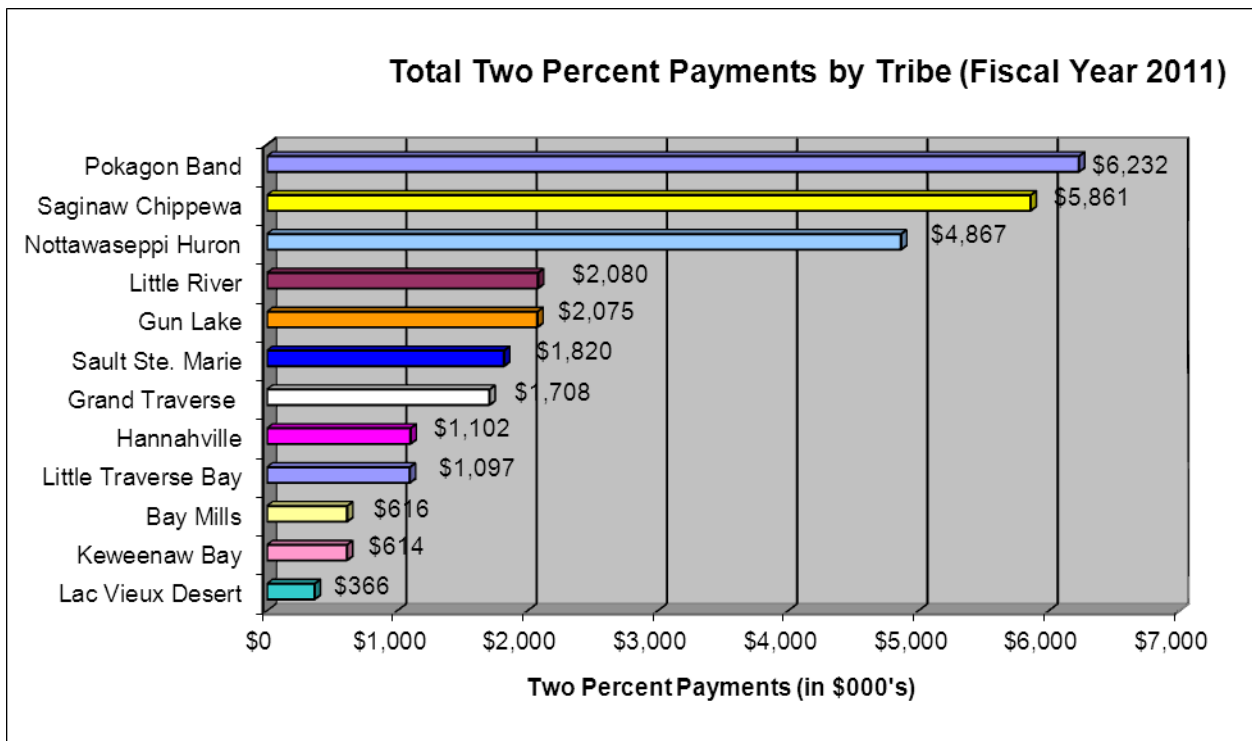
These funds are placed into the Native American Casino Fund which recorded expenditures of \$478.2 thousand during calendar year 2011.

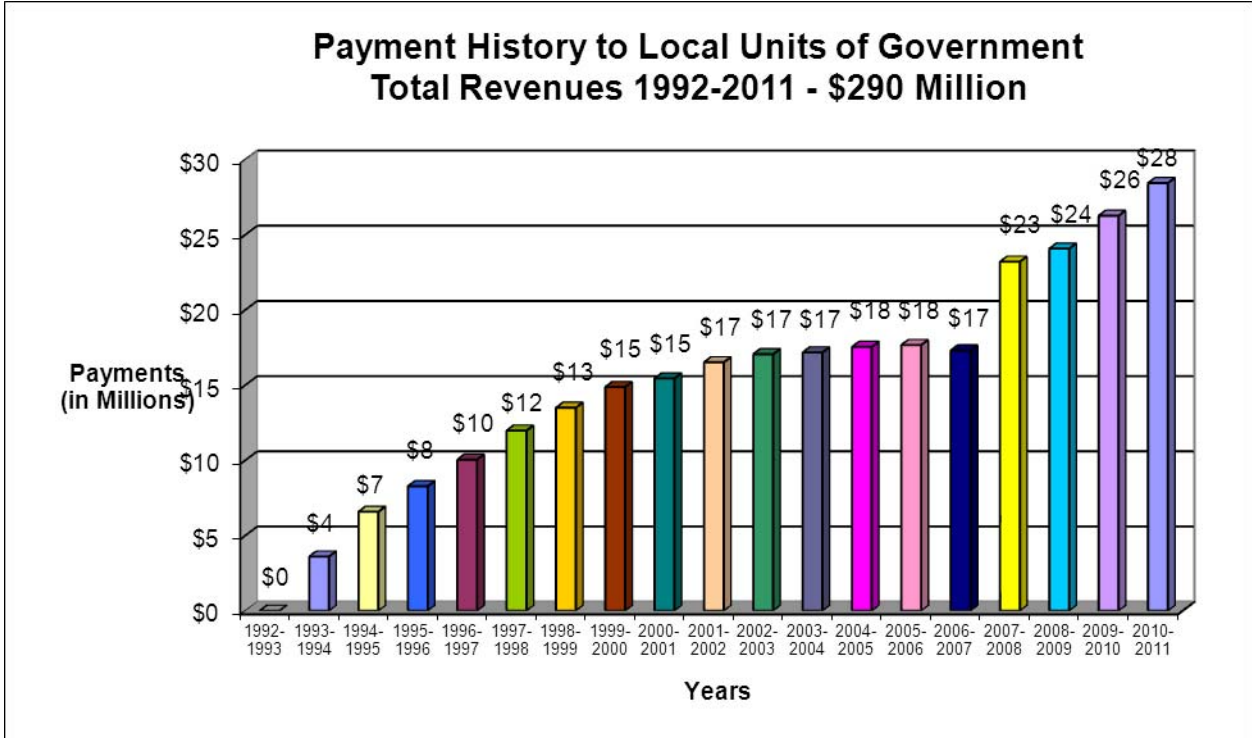


## Oversight Accomplishments

### *Financial Audits*

Under provisions of the Tribal-State Class III Gaming Compacts and related Consent Judgments, all Tribes are required to remit two percent of their respective net win to local units of state government or local revenue sharing boards. For reporting period 2011, Tribes collectively remitted \$28.4 million to local units of state government/local revenue sharing boards in two percent payments. *Please see the following charts for 2011 payments by Tribe and yearly totals.*



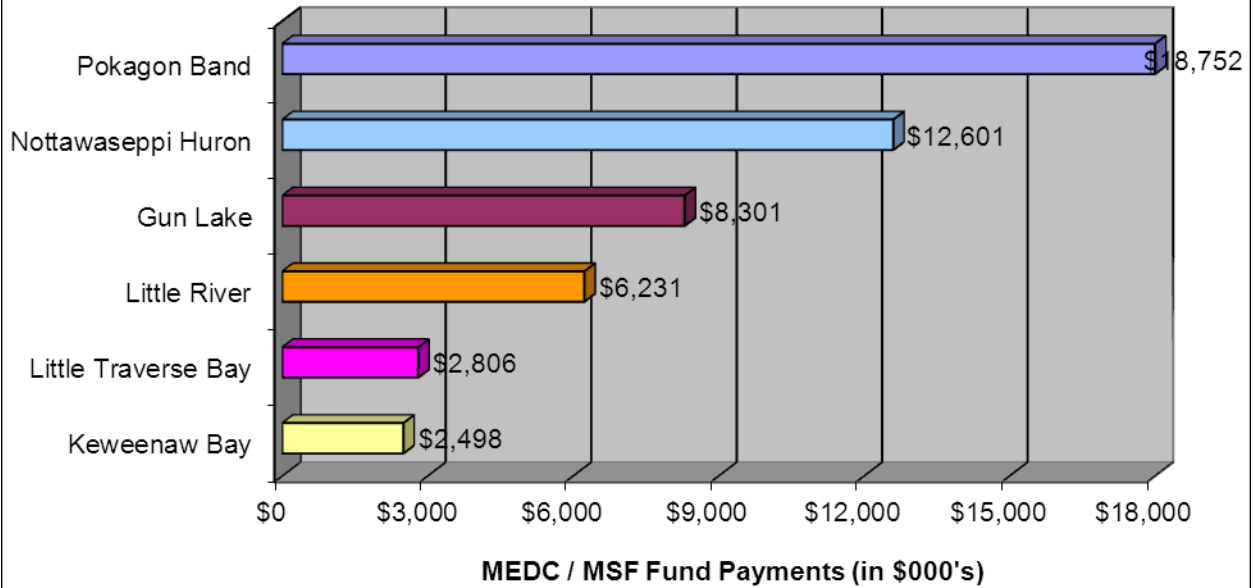


In addition, the Tribal-State Compacts and Consent Judgments require some Tribes, based on exclusivity provisions, to remit payments to the MEDC or the MSF. For reporting period 2011, Tribes remitted \$51.2 million in payments to the MEDC or MSF. Please see the following charts for 2011 payments by Tribe and yearly totals.

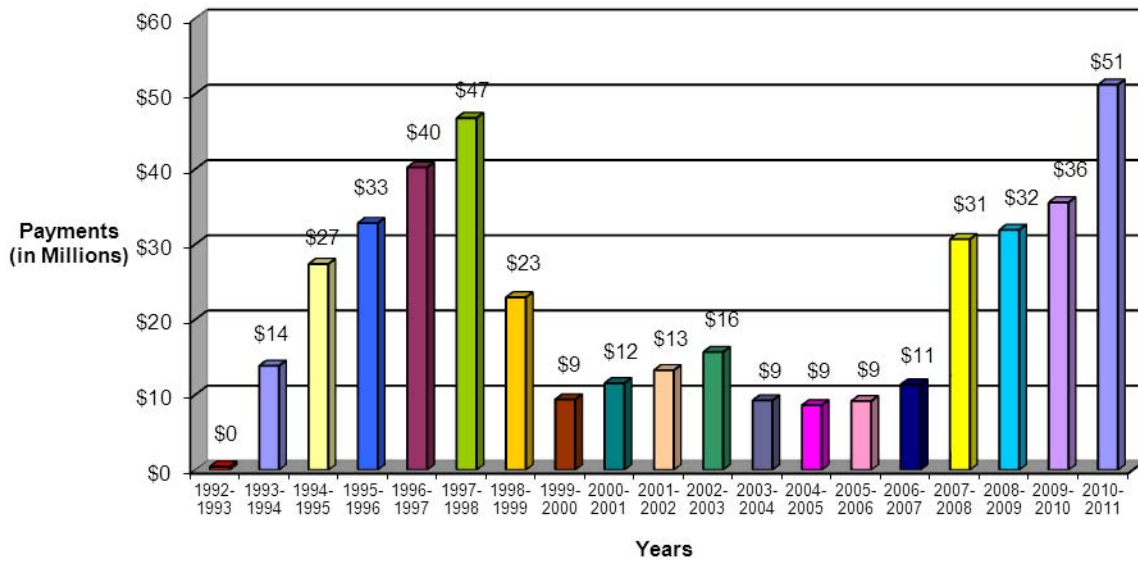


# Michigan Gaming Control Board

**Total MEDC / MSF Fund Payments by Tribe (Fiscal Year 2011)**



**Payment History to the MEDC / MSF Fund  
Total Revenues 1992-2011 - \$422 Million**





***Net Win Audits/Inspections***

The Indian Gaming Section performs financial audits to ensure the net win totals are fairly stated, in all material respects, and related payments to local units of state government/local revenue sharing boards and MEDC/MSF are properly remitted in accordance with the relevant Tribal-State Gaming Compact and related Consent Judgment.

In calendar year 2011, the Indian Gaming Section presented final audit reports to five (5) Tribes covering nine (9) fiscal years listed as follows:

<b>Tribe</b>	<b>Fiscal Year</b>
Grand Traverse Band	2006
Grand Traverse Band	2007
Grand Traverse Band	2008
Little Traverse Bay Band	2009
Nottawaseppi Huron Band	2010
Pokagon Band	2008
Pokagon Band	2009
Saginaw Chippewa Indian Tribe	2007
Saginaw Chippewa Indian Tribe	2008

In addition to the these issued final reports, fieldwork and write-up was performed on an additional five (5) tribes covering seven (7) fiscal years with final reports anticipated in calendar year 2012.

***Compliance Audits/Inspections***

In addition, the Tribal-State Gaming Compacts contain several provisions that require compliance oversight. These sections include authorized Class III games, regulation of Class III gaming, employee benefits, Bank Secrecy Act, providers of Class III gaming equipment and supplies, notice to patrons, and regulation of the sale of alcoholic beverages.

The Indian Gaming Section presented final compliance audit reports on the extent of compliance with various sections of the Tribal-State Gaming Compacts to five (5) Tribes in calendar year 2011 which included the Bay Mills Indian Community, Hannahville Indian Community, Little Traverse Bay Band, Nottawaseppi Huron Band, and Pokagon Band. In addition to these final reports, fieldwork and write-up was performed on an additional six (6) tribes with final reports anticipated in calendar year 2012.



### *Additional Accomplishments*

In addition to the audit and inspections conducted, we note the following accomplishments for calendar year 2011:

- Monitored litigation of the Bay Mills Vanderbilt Parcel and coordinated efforts with the Attorney General's office
- Obtained payments to local units of state government/local revenue sharing boards and payments to MEDC/ MSF and updated the MGCB website
- Upgraded audit management software to Teammate 9.1.3
- Prepared and submitted a Tribal-State Compact Interpretation Differences and Issues Report for executive staff
- Prepared and submitted a Michigan Indian Gaming Industry Report providing an overview of Michigan, comparative analysis of other states', challenges, and outlook
- Performed an assessment of future information technology requirements
- Performed an analysis of Michigan Indian Gaming promotional wagering
- Hired additional audit staff and attended several Indian Gaming related training conferences
- Researched the revised Generally Accepted Government Auditing Standards and began implementation of key revisions
- Prepared and submitted an annual report to the MEDC

### **Compact Interpretation Differences and Issues**

The following is a listing of interpretation differences and issues between the MGCB and various Tribes of the Tribal-State Class III Compacts provisions that the Indian Gaming Section has noted in the course of performing inspections/audits of Tribal Class III Gaming operations:

1. **The Terms of the 1993 Tribal-State Compacts are Subject to Renegotiation in 2013:** This is an opportunity to express to the appropriate level of government responsible for negotiating the future compacts that terms can be more clearly defined, the regulatory matrix revisited, and ambiguity that may exist in the present documents clarified.
2. **Indian Lands and Eligible Indian Lands:** The 1993 Compacts define "Indian Lands" as (1) all lands currently held within the limits of the Tribe's Reservation; (2) any lands contiguous to the boundaries of the reservation of the Indian tribe on October 17, 1988; and (3) any lands title which is either held in trust by the United States for the benefit of the Tribe or individual or held by the Tribe or individual subject to restriction by the United States against alienation and over which the Tribe exercises governmental power.



3. **Access to Class III Gaming Related Records:** Access to Class III gaming related records is imperative to our mission. The Indian Gaming Section has had ongoing issues with several tribes in obtaining sufficient records which would allow our staff to determine the extent of compliance with the Tribal-State Compacts.
4. **Net Win Computation:** The Indian Gaming Section has had several differences with several tribes in the interpretation of the Tribal-State Compact and related Stipulation for Entry of Consent Judgment related to the computation of net win. Several of these differences, for example Wide Area Progressive, have been largely resolved. The most significant difference not entirely resolved with all tribes is the interpretation of the term “total amount wagered” on freeplay credits issued gratuitously by tribal casinos to their patrons.
5. **Gun Lake Technical Standards:** Pursuant to Section 6(A) of the Tribal-State Compact between the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians (Gun Lake Tribe) and the State of Michigan, Class III gaming equipment purchased, leased, or otherwise acquired by the Gun Lake Tribe must meet the technical equipment standards of the State of Michigan or applicable standards established by the National Indian Gaming Commission, whichever is more restrictive. The Indian Gaming Section is unaware of any relevant standards promulgated by the National Indian Gaming Commission and, as such, is of the opinion that the technical standards of the State of Michigan should be adhered to by the Gun Lake Tribe.
6. **Role of the National Indian Gaming Commission (NIGC) and State of Michigan in the Oversight of Class III Gaming:** A federal court decision known as the Colorado River Indian Tribe or CRIT generally concluded the NIGC lacks authority to promulgate and issue rulings requiring Minimum Internal Control Standards on tribal Class III gaming operations. By extension, the NIGC would also lack authority to require tribes to have an annual independent audit conducted of their Class III gaming operations including an evaluation of their internal control structure. The State of Michigan Tribal-State Class III Gaming Compact does not specifically require these crucial controls and audit requirements be adopted and implemented. Therefore, a gap in the requirement of the development, implementation, and enforcement of minimum internal control standards and for the conduct of audits of the financial statements and internal controls exists.



7. **Punitive Language and Assessment of Fines:** The Tribal-State Class III Gaming Compacts lack any punitive or assessment of fine provisions in the event that it is determined that the Tribe has violated the Tribal-State Compact provisions. This has led, in many cases, to scenarios in which tribes disregard alleged violations of the Tribal-State Class III Gaming Compact and force the State of Michigan to enforce the Compact provisions through the Section 7 Dispute Resolution process and federal legal system. This process is costly and time consuming. Many of the Tribal-State Class III Gaming Compacts do not provide sufficient funds to reimburse the State of Michigan for the costs required to ensure compliance with their provisions or to support legal costs required to litigate alleged violations of the Compact or through the federal legal system.
  
8. **Two Percent Payment Determinations:** Under the terms of the 1993 Tribal-State Compacts and related Stipulation for Entry of Consent Judgment, the tribes are required to remit semiannual payments to local units of state government in the immediate vicinity of each tribal casino in an aggregate amount equal to two percent of the net win at each casino derived from all Class III electronic games of chance. The guidelines governing the tribes in determining which local units of government receive two percent disbursements must be based upon compensating local units of government for services provided to the tribes and for impacts associated with the existence and location of the tribal casinos. In reviewing the 1993 tribes' two percent distributions, the Indian Gaming Section's primary objectives are to ensure that all payments are remitted to local units of state government (as commonly defined) and to ensure that the tribes' recipient selection criteria are generally consistent with those required under the terms of the Tribal-State Compact and Stipulation for Entry of Consent Judgment.

While the Indian Gaming Section has made significant progress with several tribes in ensuring that two percent payments are remitted only to local units of state government, our inspection/audit reports continue to note exceptions related to the manner in which several tribes disburse two percent funds. Tribes have been self-defining what qualifies as a payment and what qualifies as a local unit of state government, directing pass through transactions to circumvent the requirements of the Compact and Consent Judgment, and remitting payments that appear to have no clear connection as reimbursement for government services provided to the tribe and an impact associated with the existence and location of the tribal casino.

9. **Supplier and Employee Background Investigations:** Supplier and employee background investigations terms are largely ambiguous. There is a lack of guidance in determining which suppliers are providing gaming equipment and

required to be licensed. There is little guidance as to what process is required when performing a background check of potential suppliers or employees, whether the licenses require renewal, and clear suitability standards. It provides tribes with vast discretion to pardon, expunge, and forgive offenses. The Tribal-State Compacts allow for the State to conduct its own background investigation but fail to provide a mechanism that would be carried out if the State of Michigan should disagree with the determination that the tribes make. The language should be examined more closely to develop clearer direction for the tribes and State on the process and standards.

10. **Ad Valorem:** The Tribal-State Compacts and related Consent Judgment also include language that require a minimum ad valorem property tax amount be determined and that minimum amount be remitted to the applicable local unit of government. This language has proven to be problematic due to practical concerns, vast discretion in the valuation of the Indian Gaming facility, the lack of guidance that exists in properly assessing an Indian Gaming facility, and the lack of transparency from tribal gaming operations in providing data to assessors required to perform an assessment.
11. **Payments to the Michigan Economic Development Corporation:** The Indian Gaming Section has made significant progress in assisting or resolving several issues related to underpayment of funds due from tribes to the MEDC. The Indian Gaming Audit Section has requested that dispute resolution be initiated with the Keweenaw Bay Indian Community for the practice of offsetting eight percent payments to the MEDC. The Tribe defends this practice as allowable based on a tax claim they have with a separate State of Michigan Department. While previous offsets are yet to be resolved, recent data suggests that the Keweenaw Bay Indian Community has discontinued this practice.
12. **Exclusivity Provision:** The Compacts and Stipulation for Entry of Consent Judgment generally contain exclusivity provisions that allow for the Tribe to discontinue payments to the MEDC/MSF should certain events trigger the exclusivity provision. Tribes are continually monitoring changes in the Michigan gaming industry for justification to discontinue these payments. The State of Michigan's "Keno" case with the Little River Band and Little Traverse Bay Band resolved in 2008 is such an example. The 1998 Compacts were amended in an attempt to address this concern. In addition, several tribes in other states have alleged that states have acted in bad faith by requiring revenue sharing provisions be contained within compacts. The 2007 Gun Lake Compact provisions also attempted to address this concern by defining a competitive market area and discouraging the proliferation of Class III commercial gaming while permitting the Lottery reasonable latitude to innovate and remain competitive.



13. **Application of Liquor Laws to Tribal-State Compact:** The Tribal-State Compact requires that “the Tribe hereby adopts and applies to its tribal Class III gaming establishment as tribal law those State laws, as amended, relating to the sale and regulation of alcoholic beverages encompassing the following areas: sale to a minor;...and similar substantive provisions.” The term “similar substantive provisions” is vague and ambiguous. One tribe has failed to obtain the Indian Tribe Permit from the Liquor Control Commission required to receive shipments of liquor at one of its facilities. In addition, interpretation differences exist on the extent of state authority that pertains to the regulation of alcohol sales. The general tone of Indian country is alcohol sales are not subject to state authority while many others are under the opinion they are.
14. **Unauthorized Promotional Lotteries:** Our inspection/audits continue to note promotional lotteries being conducted which are not specifically listed as an authorized Class III game under the 1993 Tribal-State Compacts. Several tribes have disagreed with this determination and have concluded that since no money is accepted from the patron; such promotions are not considered gaming. Several tribes have also stated that even if it were gaming, the type of gaming being conducted is not Class III and therefore not subject to the Class III Gaming Compact. The 2007 Gun Lake language also does not specifically authorize lotteries.

## Map of Tribal Casinos in Michigan



# Michigan Tribes with Compacts, Casinos, and Number of Slot Machines

MICHIGAN TRIBAL CASINO INFORMATION			
NUMBER OF LOCATIONS	TRIBAL CASINOS	Compact Year	Approximate No. of Slot Machines
2	<b>Bay Mills Indian Community</b>	1993	
	Kings Club Casino - Brimley, MI		300
	Bay Mills Resort & Casino - Brimley, MI		695
1	<b>Hannahville Tribe</b>	1993	
	Chip-In's Island Resort & Casino - Harris, MI		1400
5	<b>Sault Ste. Marie Tribe of Chippewa Indians</b>	1993	
	Kewadin Casino - Christmas, MI		245
	Kewadin Casino - Hessel, MI		50
	Kewadin Casino - Manistique, MI		275
	Kewadin Casino - Sault Ste. Marie, MI		700
	Kewadin Casino - St. Ignace, MI	820	
1	<b>Lac Vieux Desert Band</b>	1993	
	Lac Vieux Desert Resort Casino - Lac Vieux Desert Band		749
2	<b>Grand Traverse Band of Ottawa &amp; Chippewa Indians</b>	1993	
	Leelanau Sands Casino - Suttons Bay, MI		482
	Turtle Creek Casino - Williamsburg, MI		1331
2	<b>Keweenaw Bay Indian Community</b>	1993	
	Ojibwa Casino - Baraga, MI		331
	Ojibwa Casino - Marquette, MI		309
3	<b>Saginaw Chippewa Indian Community</b>	1993	
	Soaring Eagle Casino & Resort - Mt. Pleasant, MI		
	Soaring Eagle Casino Slot Palace - Mt. Pleasant, MI		4400
	Saganing Casino Slot Palace - Standish, MI		800
1	<b>Little River Band - Manistee, MI</b>	1998	
	Little River Casino		1500
1	<b>Little Traverse Bay Band of Odawa Indians</b>	1998	
	Odawa Casino & Hotel - Petoskey, MI		1500
2	<b>Pokagon Band of Potawatomi</b>	1998	
	Four Winds Casino - New Buffalo, MI		3000
	Four Winds Hartford Casino - Hartford, MI		500
1	<b>Nottawaseppi Huron Potawatomi</b>	1998	
	FireKeepers Casino - Battle Creek, MI		2680
1	<b>Gun Lake Tribe</b>	2007	
	Gun Lake Tribe Casino - Wayland, MI		1400
	<b>TOTAL SLOT MACHINES IN TRIBAL CASINOS</b>		23,467
<b>22</b>	<b>TOTAL TRIBAL CASINOS IN MICHIGAN</b>		