

BIOGRAPHY



Michelle L. LaPena is experienced in a broad spectrum of tribal legal matters including tribal gaming regulation, cultural resource protection, Indian child welfare, tribal taxation, administrative law and general civil litigation involving tribal governments. She is extensively involved in developing statewide policy on cultural resource protection, tribal taxation, tribal consultation and gaming regulation. In 1999, she assisted in the negotiation of a tribal-state gaming compact with the State of California. Prior to entering private practice, she edited and contributed significantly to reports that were submitted to Congress in August 1997 by the Advisory Council on California Indian Policy. She also has served as a trainer for the National Indian Gaming Association, Gaming Regulator Certificate Program and lectured at primary, secondary and university levels on topics related to California Indians and federal Indian law.

In 2003, Michelle was appointed to the Governor's Children's Justice Act Task Force which allocates Title IV-E money to the state of California. Additionally, Michelle is a member of the Pit River Indian Tribe, and is admitted to practice in California, all federal district courts in California, and the Hoopa Valley Tribal Court. She received her B.A. in 1993 and her J.D. in 1998, both from the University of California, Davis.

Publications:

“Real Estate Transactions in California's "Indian Country": How to Conduct Business with California Indian Tribal Governments and Businesses,” *Los Angeles Lawyer Magazine*, January 2006 (Cover Story).

Book Review, “Negotiating Tribal Water Rights: Fulfilling Promises in the Arid West,” by . By Bonnie G. Colby, John E. Thorson, and Sarah Britton; foreword by David H. Getches. Tucson: University of Arizona Press, *American Indian Cultural and Research Journal*, Vol. 30, No. 1 (2005).

“A Healing Process,” reprinted in *Frontiers: A Journal of Women's Studies*, University of Washington Press, Vol. 23, No. 2 (2002).

Book Review, “To Show Heart: Native American Self-Determination and Federal Indian Policy, 1960-75,” by George Pierre Castile, *American Indian Cultural and Research Journal*, Vol. No. (1999).

“Federal Land Management Practices and California Indians: A Proposal to Protect Native Plant Species,” *Environs*, UC Davis Environmental Law Review, June 1998.

“A Healing Process,” *Prized Writing 1992-1993*, An Anthology from the University of California, 1993.

Contributing Editor, *News from Native California*, 1993-96.

Disclaimer: The information provided in this handout is general information and not designed to be and should not be relied on as your sole source of information when analyzing and resolving a specific legal issue. Each fact situation is different; the laws are constantly changing. If you have specific questions regarding a particular fact situation, we urge you to consult with legal counsel.

INDIAN LAW

The LaPena Law Corporation concentrates on all aspects of Indian law, tribal governmental and economic development issues. Michelle LaPena is experienced in counseling on matters relating to tribal governmental operations; fee-to-trust and related real estate issues on and off reservation lands; tribal consultation; cultural resource protection; financing of tribal development projects; gaming operations and regulation, establishing and counseling tribal gaming commissions; preparation of tribal codes and constitutions; Indian law litigation including environmental issues, contract disputes, Indian child welfare, and gaming; and other Indian law matters.

Cultural Resource Protection

State and Federal Law Implementation. As a leader in the development of state and federal cultural preservation laws, Michelle LaPena can advise tribal and local governments regarding the implementation of those laws. Consideration of all tribal, state and federal issues that might arise can require advice, counseling, negotiation and representation in the following areas:

- Negotiation of cultural resource protection and tribal monitoring agreements;
- State general planning process participation including consultation with local governments, developing mitigation agreements, and identifying preservation issues under tribal, state and federal law;
- Developing protocols for effective consultation between tribal and local governments during the general planning process;
- Compliance with and implementation of the Native American Graves Protection and Repatriation Act;
- Determining the applicability of tribal, local, state and federal land use and environmental laws and policies on a particular site or development; and
- Where no other option is feasible, litigation based on state or federal law violations during the planning and development process.

SB 18 – New California General Planning Law. In addition to providing the legal services necessary for productive consultation and preservation of cultural resources, Ms. LaPena serves as a trainer in SB 18 seminars sponsored by the California Tribal Business Alliance and the Governor’s Office of Planning and Research.

Land Use Planning and Environmental Law

Michelle LaPena advises tribal clients in environmental law, both with respect to new construction and tribal gaming compact compliance. This advice involves application of tribal, state and federal environmental laws including the National Environmental Protection Act and the California Environmental Quality Act. In order to effectively advise tribal clients on environmental issues, Ms. LaPena provides advice, counseling, negotiation and representation in the following areas:

- Monitoring proposed legislation and analyzing its potential impact on tribal resources;
- Tracking federal resource agency rulemaking and policy-making that impacts tribal resource protection and access;

- Briefing agencies, legislative and congressional staff to increase awareness and obtain support of decision-makers;
- Maintaining relationships with key local, state and federal decision makers; and
- Defending legal challenges to tribal development projects under CEQA and NEPA.

Land Into Trust

Ms. LaPena has advised tribal clients in all aspects of the land into trust process. The land into trust process has many aspects-- from drafting and submitting tribal resolutions and the application, to compliance with the National Environmental Protection Act, to briefing agencies, legislative and congressional staff to get their support, to defending an appeal of the final agency decision. Ms. LaPena has handled all aspects of the process and has a record of success with fee to trust applications.

Tribal Tax Policy and Practice. Ms. LaPena is experienced in structuring tribal Revenue Allocation Plans and other tribal programs for utilizing gaming revenues, and has drafted requests for private letter ruling from the Internal Revenue Service. In addition to her in-depth understanding of inherent tribal sovereignty and tribal tax policy, Ms. LaPena has ongoing interaction with the California Board of Equalization and helped tribal clients develop and implement a state use tax exemption for sales of food and beverages on Indian lands.

Indian Gaming

Casino Development. In providing legal services for tribally-based gaming projects, LaPena Law Corporation can participate in all strategic legal, economic, and development planning that is required, including consideration of all tribal, state and federal issues that might arise. These typically include advice, counseling, negotiation and representation in the following areas:

- Negotiation of tribal-state compacts;
- The selection of the project site, including jurisdictional, fee-to-trust, and development issues under tribal, state and federal law, and the availability of gaming on specific portions of the land under IGRA;
- The impact of tribal, local, state and federal land use and environmental laws and policies;
- Gaming regulatory issues, including the preparation of gaming ordinances, tribal gaming commission policies and procedures and related issues;
- Preparation of appropriate development agreements, including architectural and engineering agreements, general contractor agreements, sovereign immunity limitations, bid documents, standards and procedures, and liability;
- Preparation of applicable consulting and management contracts for various aspects of the project; and
- Rendering formal legal opinions to meet lender and others' requirements.

Gaming Commissions. In addition to providing the legal services necessary to finance, construct, develop and operate a casino, Ms. LaPena has served as a trainer for the National Indian Gaming Association and provided ongoing legal services to numerous Tribal Gaming Commissions.