

The logo consists of the text 'Fi360' in a white, sans-serif font, centered within a white square border. The background of the entire image is a gradient from yellow-orange at the top to red-orange at the bottom.

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The Fiduciary's Role in the Rebirth of a Tribal Nation

*“From Fraud to Fiduciary
in Five Years”*

Pat Mercier • Kate McBride •
Allan Henriques • May 7, 2020



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Allan Henriques

- AIF[®], AIFA[®] and CEFEX Analyst with over 40 years of legal and fiduciary investment management experience
- Founder of Smart Investor, a CEFEX Certified Registered Investment Advisor firm that worked with Paskenta in helping the Tribe become the first Sovereign Tribal Nation in California to become CEFEX Certified
- Serves as Chairman of Smart Investor
- Provides Fiduciary Training for Nonprofit Leaders



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Pat Mercier

- Chief Financial Officer, Paskenta Band of Nomlaki Indians
- More than 25 years experience in providing financial structure and advice to many Sovereign Nation Tribal Governments
- Recently named Economic Professional of the Year by Travois, a consultant firm directing more than \$1.4 Billion of investments in American Indian communities, for her leadership and work in Paskenta's
 - Expansion of its medical clinic
 - Building a community center, administration and wellness center





Kate McBride

- AIF®, AIFA®, CEFEX Analyst with extensive fiduciary consulting background and more than 35 years of investment industry experience. Author of several CEFEX case studies
- CEFEX Analyst who performed CEFEX Assessment for Paskenta
- Works with organizations to assess, improve and certify their investment fiduciary process
- Provides Fiduciary Essentials® training to leaders of nonprofits and retirement plans
- A Founder and former Chair of The Committee for the Fiduciary Standard, McBride meets regularly with policymakers



Learning Objectives

- Appreciate how quickly and easily Fiduciary Best Practices can lead to CEFEX Certification for Tribal Governments and Nonprofits
- Understand the untapped market and opportunity CEFEX Certified firms and fiduciary advisors have to assist Tribal Governments and Nonprofits
- Understand the three types of Investment Stewards in the Tribal Government space





The Paskenta Story





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Mount Lassen & Mount Shasta



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A Little History and Perspective

- 1808 - Spanish explorer Gabriel Moraga “discovers” the Nomlaki’s on their ancestral lands along the Sacramento River in Northern California
- 1849 - California Gold Rush
- 1854 - Congress creates 25,000 acre Nomlaki Indian Reservation
- 1863 - US government forcibly “relocates” the Nomlaki’s - fertile former Reservation land made available to non-Indians
- 1920 - Congress establishes 260 acre Paskenta Rancheria for the Nomlaki’s
- 1959 - Nomlaki Tribe loses “Federal Recognition” - Tribal lands sold to non-Indians



“Congress shall have the power to . . . regulate commerce with foreign nations and among the several states, and with the Indian tribes . . . ”

US Constitution Article I, Section 8

- Tribal Sovereignty - US Government recognizes indigenous Tribes as “domestic dependent nations” with the inherent authority to govern themselves
- Long history of treaties, laws and regulations attempting to clarify the relationship between the federal, state and Tribal governments



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US Supreme Court holds that gambling activities on Tribal lands is to be regulated exclusively by Congress and the federal government - not State and Local governments.

California v Cabazon Band of Mission Indians, 1987

- Tribal Sovereignty effectively authorizes Indian gaming unless gambling was deemed criminal by State law
- 1988 - Congress enacts the Indian Gaming Regulatory Act recognizing Tribal Sovereignty to create casino operations, requiring States and Tribal Nations to enter into “Compacts” and be federally regulated
 - Creates new revenue sources for Tribal Nations and the States where casinos located



Paskenta's Long Road to Economic Development

- 1990 - Nomlaki families begin lobbying Congress for formal “Re-Recognition”
- 1993 - Paskenta Band adopts interim Tribal Constitution
- 1994 - Congress adopts the Paskenta Band Restoration Act and restores federal recognition of the Nomlaki
- 1996 - Bureau of Indian Affairs certifies 261 persons on the first post-Restoration Official Nomlaki Tribal Roll
- 2000 - Tribe enters Compact with State
- 2002 - Rolling Hills Casino is opened



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Infiltration and Takeover . . .

(from the allegations of the lawsuit filed by the Tribe in 2015)

- Early 1990's - Three non-member Indians (Pata family) begin volunteering with Paskenta Tribe
- 1996 – Pata family member secures paid position as Tribal Administrator
 - Signing authority on Tribal bank accounts
 - Hires another family member as her Assistant
 - Controls Tribal Office records, operations



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Infiltration and Takeover *(continued)*

(from the allegations of the lawsuit filed by the Tribe in 2015)

- 1998 – Non member Administrator opens Tribal Enrollment for 30 days allowing herself and two other “volunteers” to become Tribal members, as well as other members of the Pata family, which becomes 35% of voting membership
- 2001 – Without open competition, another Pata family member was hired as Tribal Economic Director with full access and direction over Tribal funds



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Falsehoods and Intimidation 2002 - 2014

(from the allegations of the lawsuit filed by the Tribe in 2015)

- Nonexistent “requirements” invented to mislead and prevent Tribal members access to Tribal documents, including financial records and Tribal Constitution
 - “Requirement” of \$1 million bond to run for Tribal Treasurer when there was no such requirement and Treasurer didn’t have the “required” bond
- Tribal members who raised questions were quickly punished
 - Member Tribal Secretary removed from office and tribal benefits suspended for number of years leaving her and family destitute, other members treated in similar manner for raising questions or challenging actions



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“Profits” of the Takeover 2002 - 2014 . . .

(from the allegations of the lawsuit filed by the Tribe in 2015)

- Co-conspirators received combined excess compensation of \$14.4 million and \$4.4 million excess retirement plan contributions plus millions of dollars of Tribal funds used by them to
 - Purchase vacations, vehicles and luxury homes
 - “Reimburse” expenses for lavish sporting events, travel and non-Tribal expenses
 - Make “loans” and cash disbursements



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Taking Back - First Steps

- New Tribal Council elected
 - Hiring of professional executive staff with Tribal turnaround experience
- Pata family members suspended from Tribal Rolls, later determined to have been ineligible for membership
- Co-conspirators employment contracts terminated
- Tribal internal investigation initiated
 - Hiring of Wilmer Hale (well respected firm that had previously conducted investigations during Enron and Worldcom crises, as well as a respected forensic accounting firm)



Taking Back “Challenges”

- Some counter actions instigated by co-conspirators
 - Initiated cyber-attack
 - Shut down Casino services and power
 - Permanently destroys substantial amount of data including Casino Customer Loyalty Program records
 - Eliminated entire databases and backups
 - Initiated public disinformation program to discredit new Tribal Council
 - Hired false “Tribal Police Force” armed with automatic weapons; attempts to close Casino
 - Armed standoff at the Casino



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Northern California tribe splits into armed camps over casino profits

BY STEPHEN MAGAGNINI - SMAGAGNINI@SACBEE.COM

JUNE 15, 2014 12:00 AM, UPDATED OCTOBER 08, 2014 12:17 PM



Tribal conflict escalates as groups try to shut down casino

Julie R. Johnson/Corning Observer Jun 10, 2014



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We've Got it Back - Now What?

- Young, smart, but inexperienced Tribal Council dedicated to doing the right thing, being transparent and communicating clearly with the Tribal membership
- Committed to preventing fraud and protecting tribal assets by establishing internal financial and operational systems and controls
- Five Year Tribal Strategic Plan with significant Tribal membership input
- RFP to Hire Fiduciary Investment Manager to collaborate with Tribal Council, create IPS's and manage
 - Retirement Plans
 - Minor's Trusts
 - Endowment Portfolios



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Planning a new future



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Into the Future — With a Plan

What We Will Do:

The Tribe adopted four objectives for the next five years

Objective 1: Establish a high functioning and transparent Tribal government

Objective 2: *Create a diverse and robust portfolio of Tribal investments that support economic development and member welfare*

Objective 3: Ensure all Tribal members have adequate resources to manage their health needs

Objective 4: Support the improvement of members' housing conditions

... from the Tribe's Strategic Plan



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Fast Track to Fiduciary Excellence[®]

1. Fiduciary Training
for Nonprofit Leaders
2. Fiduciary Gap Analysis –
Fiduciary Assessment
3. Independent Third-Party
Verification and Certification

PRUDENT PRACTICES FOR INVESTMENT STEWARDS



Fiduciary practices for persons who have the legal responsibility for managing investment decisions, such as trustees and investment committee members.



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Applying the Tools of the Trade

21 Investment Prudent Practices (each substantiated in law and regulation, with technical review of the AICPA) guided by eight fiduciary precepts

- Follow laws and governing documents
- Diversify to manage risk and return
- Prepare and follow an investment policy statement
- Prudently select fiduciary and non-fiduciary service providers
- Control and account for costs
- Avoid or manage conflicts of interest
- Monitor service providers
- Monitor and assure conformity to fiduciary obligations



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Implementing a Culture of Fiduciary Excellence

- Smart Investor hired to manage three different types of portfolios -- each with their own objectives and needs
 - Retirement Plans
 - Minor's Trusts
 - Endowment Portfolios
- Organize - identify the laws, governing documents and other sources of guidance for fiduciary conduct
- Formalize - identify the investment objectives and constraints, formulate asset allocation strategies and adopt IPS's
- Implement - perform investment and service provider due diligence
- Monitor - engage in periodic reviews to ensure investment objectives and constraints are met



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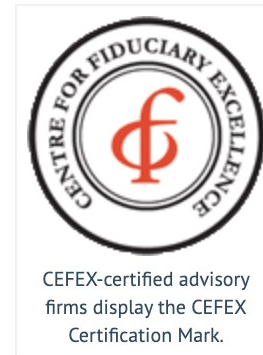
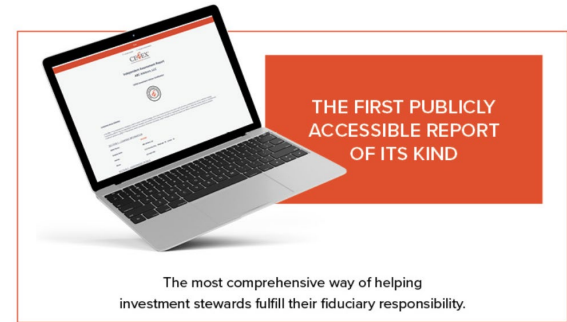
First CEFEX Certified Tribal Government in California

- Paskenta was the first Tribal Government to be CEFEX certified in Calif. And the 2nd in the US.
- Selected a CEFEX Certified RIA — Smart Investor which made Paskenta's CEFEX certification simpler
- Several accounts, differing account types

INTRODUCING THE INDEPENDENT ASSESSMENT REPORT

With this CEFEX exclusive report, Investment Stewards can now easily document their advisor selection with confidence. The IAR provides a summary of CEFEX's rigorous annual assessment including the methodology, the date and the people involved.

[Learn more about the Independent Assessment Report](#)



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CEFEX Certification and the Culture of Fiduciary Excellence

- Paskenta Community Center details
- Paskenta partnered with community to earn grants of approximately \$15 million to Tehama County schools and nonprofits.
- Corning Promise



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SUCCESS!



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Tribal Gaming Landscape

- 574 federally (Bureau of Indian Affairs) recognized Tribal governments in US; 231 located in Alaska
- 501 Indian Gaming operations in US; owned by 246 federally recognized Tribes; located in 29 States
- Number of CEFEX Certified Tribal Governments: 2



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Tribal Gaming Financial Impact

- 2018 - Annual Revenue from US Indian Gaming \$37.7 Billion (approximately 45% of all casino gaming revenue in US)
- Indian Gaming, including non-gaming operations, directly and indirectly, annually generate
 - \$105 Billion economic output
 - 676,000 jobs
 - \$36.2 Billion in wages
 - \$1.83 Billion in direct revenue sharing to states
 - \$13.4 Billion in federal, state and local income taxes



INDIAN GAMING STATES



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National Indian Gaming Commission
Tribal Gaming Revenues (in thousands) by Region
Fiscal Year 2018 and 2017

	Fiscal Year 2018		Fiscal Year 2017		Increase (decrease)		
	Number of Submissions	Gaming Revenues	Number of Submissions	Gaming Revenues	Number of Submissions	Gaming Revenues	Revenue Percentage
Portland	55	\$3,662,891	52	\$3,383,829	3	\$279,063	8.2%
Sacramento	73	\$9,279,366	74	\$8,996,042	(1)	\$283,324	3.1%
Phoenix	59	\$3,141,434	59	\$3,037,879	0	\$103,555	3.4%
St. Paul	95	\$4,795,897	92	\$4,586,695	3	\$209,201	4.6%
Rapid City	36	\$368,601	39	\$363,257	(3)	\$5,344	1.5%
Tulsa	73	\$2,466,359	72	\$2,391,294	1	\$75,064	3.1%
OK City	72	\$2,479,814	69	\$2,311,621	3	\$168,193	7.3%
Washington DC	38	\$7,525,208	37	\$7,333,311	1	\$191,897	2.6%
Totals	501	\$33,719,569	494	\$32,403,927	7	\$1,315,642	4.1%

Source: Compiled from gaming operation audited financial statements received by the NIGC through September 10, 2019

Portland	Alaska, Idaho, Oregon, and Washington.
Sacramento	California, and Northern Nevada.
Phoenix	Arizona, Colorado, New Mexico, and Southern Nevada.
St. Paul	Indiana, Iowa, Michigan, Minnesota, Nebraska and Wisconsin.
Rapid City	North Dakota, South Dakota, Montana and Wyoming.
Tulsa	Kansas, and Eastern Oklahoma.
OK City	Western Oklahoma and Texas.
Washington DC	Alabama, Connecticut, Florida, Louisiana, Mississippi, North Carolina, and New York.



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Nonprofits Landscape

- 1.56 million Nonprofits registered with IRS in 2015; 10.4% increase since 2005
- Check state by state details at <https://independentsector.org/about/the-charitable-sector/>
- Review IRS Form 990's on <https://candid.org/research-and-verify-nonprofits/990-finder>
- Number of CEFEX Certified Nonprofits: 9



Nonprofits Financial Impact

- Nonprofit Sector is third largest US workforce sector (behind retail and manufacturing)
 - \$985.4 Billion annual contribution to US economy (5.4% of US GDP) in 2015
 - 11.4 million jobs (about 10% of US workforce)
 - 63 million Americans (25% of adult population) volunteer annually (\$193 Billion value)
- Public Charities are majority of Nonprofit Sector
 - 75% of revenue (\$1.98 Trillion)
 - 66% of total assets (3.67 Trillion)



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Questions



THANK
YOU
