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ADDITIONAL MEMO: MEMORANDUM OF LAW RE: INELIGIBILITY OF BUENA VISTA FEE LANDS FOR ANY CLASS II OR CLASS III GAMING UNDER THE I.G.R.A.

Class II and class III Indian casino gambling is only permissible if conducted in conformity with the Indian Gaming and Regulatory Act of 1988 [I.G.R.A.] 25 U.S.C. 2701 et.seq. In particular such gambling or gaming activity must be conducted on eligible "Indian Lands" as defined in 25 U.S.C. 2703 or if proposed for land acquired after the October 1988 cut-off date set out in section 2703 then it must be pursuant to one of the exceptions set out in 25 U.S.C. 2719.

Similarly no class III gambling casinos are permitted in any state unless a valid tribal-state compact is lawfully in effect, meaning lawful under the laws of the state in which the casino is proposed 25 U.S.C. 2710(d)(3).

Even if the Buena Vista Rancheria land had any collective Indian characteristics resulting from the Tillie Hardwick case, once former Indian Lands have passed out of trust or restricted fee status through a probate proceeding they are no longer eligible for Indian Gaming under the I.G.R.A. because they are no longer in trust or restricted fee. The only way such land can be restored to trust is by a transfer of fee to federal trust pursuant to the Indian Reorganization Act 25 U.S.C. 465, 479. See for example Ruth Pinto Lewis versus Eastern Navajo Superintendent, Bureau of Indian Affairs, [10/3/1975] 4 IBIA 147, [82 Interior Decision 521]

The recent U.S. Supreme Court decision in Carcieri v. Salazar has held that when land is sought to be brought into trust pursuant to the Indian Reorganization Act 25 U.S.C. 465, 479 the Indians or Indian Entity seeking such a transfer must have been under federal jurisdiction on the date of the Act, i.e., 1934.

Indian Land can also be created by an Act of Congress or by a treaty predating 1881 when further treaties with Indians to create reservations were prohibited. Generally in California no further reservations were permitted beyond the original existing four (4) after Act of Congress in 1864 with a few specific set asides for various bands by presidential directives as set out in the attached EXHIBIT "1".

The determination of eligible "Indian lands" is one that needs to be made by the Secretary of Interior and made at the outset, see Citizens Against Casino Gambling in Erie County et.al. v. Phillip N. Hogen, Secretary of National Indian Gaming Commission [N.I.G.C.] et.al. [USDC W.D. N.Y. 2008] 471 Fed.Supp.2d 295 and such a determination must be based upon clear articulable facts, Apache Tribe of Oklahoma v. United St... [U.S. Dist. Ct. Lexis 52437] (W.D. Okla. 2008) and Kansas v. United States [10th Circ. 2001] 249 F.3d 1213.

This duty to make an Indian Lands determination is well recognized by the Department of Interior themselves, which Department has the exclusive responsibility to bring lands into trust by the provisions of title 25 U.S.C. sections 465, 479 et.seq. as evidenced by the letters attached as Exhibits hereto and designated by the numbers "2" and "3". The duty

to make that determination is the responsibility of the Department of Interior not the National Indian Gaming Commission. See attached EXHIBIT "4".

Art 4 section 19 of the California Constitution as amended in March 2000 also limits all class II and class III gambling activities in California to Indians and "Indian lands" as such lands are defined in 25 U.S.C. 2703, and 25 U.S.C. 2719.

In the present case the fee lands of Louie Oliver and Annie Oliver were never held in trust by the United States and were never a federal reservation for the benefit of any tribe, band, community or group of Indians. The United States held fee title to the land at Buena Vista as a Rancheria from 1926 to 1959 and allowed the Olivers to reside there on an informal assignment. Those lands were then deeded in fee by the United States to Louie Oliver and Annie Oliver husband and wife as joint tenants in 1959. A Rancheria was not a reservation. See attached opinion of the solicitor Exhibit "5" hereto[1] and which is EXHIBIT "B" to the History of the Buena Vista Rancheria Lands submitted herein.

Between 1959, when the land was deeded to the Olivers and 1996, those fee lands were deeded and distributed to some of the descendants of the Olivers, two of whom received title in fee, according to state inheritance law and the property was also deeded in part and ultimately passed to others who were not descendants of the original assignees and occupants of the Buena Vista Rancheria, i.e., Louie Oliver, Annie Oliver or Louie's brother John Oliver and his descendents.

Although the Buena Vista Rancheria land was deeded to Louie Oliver and Annie Oliver in 1959, the Olivers themselves were not named in the subsequent Tillie Hardwick case filed in 1979, discussed infra. They were made a part of that class of Plaintiffs in a class action lawsuit which ultimately was resolved by stipulated judgment. A copy of that judgment is attached hereto as Exhibit "6" along with the official explanation of it sent to the class plaintiffs including the then surviving heirs of the joint tenant sole owner Louie Oliver whose wife Annie had pre-deceased him. Louie Oliver was survived by a daughter Lucille, and a son Enos. Enos died just prior to the filing of the Tillie Hardwick class action. One other potential heir, Jesse Flying Cloud Pope conveyed any and all right, title and interest in the Oliver fee land and former Buena Vista Rancheria to Enos Oliver and Lucille Lucero.

The stipulated judgment in that Tillie Hardwick case had only two relevant effects here. First the Olivers were restored to their previous status as "Indians"[2] and the Buena Vista fee land that Louie Oliver owned at the time of his death remained owned in fee unless and until the successors, Lucille [Oliver] Lucero and the estate of Enos Oliver, deceased, **elected within the two year period following entry of judgment,** [as provided for in the 1983 judgment], **to convey that fee land back to the United States "in trust."** As

[1] In a few cases in which some Rancherias were provided extensive federal funded improvements and supervision and the federal government entered into contracts for grants and improvements and other incidents of federal involvement and supervision on a government to government relationship or basis, courts have held in those cases the affected "Rancheria" became a de facto reservation.

[2] This restoration included John Oliver who was an assignee and occupant of Buena Vista Rancheria.

set out above, neither of these Olivers, their successor heirs Lucille Lucero (their daughter) and the estate of Enos Oliver (their deceased son), elected to convey the land to the United States into Indian trust status pursuant to the judgment within the time provided. See notice of settlement attached hereto as EXHIBIT "7" and which is also EXHIBITS "O", "P" and "Q" to the History of the Buena Vista Rancheria Lands submitted herein.

As set out above through a series of subsequent deeds, purchases and inheritances occurring since 1959, by August 1996, the fee title was once again unified, after being acquired in pieces, by one Donna Marie Potts.

In the meantime Ms. Potts had been attempting since 1993 to have a tribal entity she called the Buena Vista Rancheria of MeWuk Indians recognized and acknowledged by the Department of Interior, Bureau of Indian Affairs although **none of the mandatory criteria provided for proper acknowledgement of any Indian tribe, group, band or community of Indians required by 25 C.F.R. 85.7 and/or 85.8, were presented in support of that attempt to gain lawful acknowledgement**.

Instead of obtaining proper lawful acknowledgement for this entity [if it was even possible], and prior to any federal acknowledgement was actually given, on 1 August 1996 Donna Marie Potts conveyed the 67.5 acre fee lands she owned by grant deed to the unorganized entity she had called the "Buena Vista Rancheria of MeWuk Indians."[3] See History of the Buena Vista Lands item 26 and 27 and [EXHIBITS "I" and "T"] in the History of the Buena Vista Rancheria descendants submitted herein.

Donna Marie Potts then immediately attempted to deed that same 67.5 acre parcel of Buena Vista fee property she owned, but which was then technically in the name of the "Buena Vista Rancheria of MeWuk Indians," to the Secretary of Interior, in trust, and typed or had typed on the face of the deed the false notation that the conveyance to the Secretary of Interior was required by or pursuant to the 1983 stipulated judgment entered in the Tillie-Hardwick case. See History of Buena Vista land, item EXHIBIT "V"]. She signed that deed to the "Buena Vista Rancheria of Mewuk Indians" as "tribal spokesperson" and then recorded it in the County Recorder's office for Amador County. Immediately following the first deed she had executed to the as yet unorganized "Buena Vista Rancheria of MeWuk Indians." [Amador County Consecutive Recorder Numbers 006858 and 006859.] She recorded this second identical grant deed from this "Buena Vista Rancheria of Mewuk Indians" as tribal spokesperson to the United States Department of Interior Bureau of Indian Affairs. [Attached EXHIBIT "W".]

It now well settled that any Indian, tribe, community, band that is a lawful group of Indians, assuming they are lawfully acknowledged, cannot simply buy a parcel of land and declare it to be entitled sovereign status or Indian trust status or any federal restricted

[3] As near as can be determined, this entity consisted of two or three other people only one of which was a descendent of the original fee land owners Louie and Annie Oliver and which included none of the descendants of Rancheria occupant and assignee John Oliver.

status. See City of Sherrill New York v. Oneida Indian Tribe of New York [U.S. Supreme Court 2005] 544 U.S. 197, 213-221.

Because Donna-Marie Potts was not the descendent of any one of the Oliver families and not a lawful member of any so-called Buena Vista MeWuk tribe, band, community or group of such Indians (assuming such an entity lawfully existed or had somehow existed and had then been restored in 1983) these attempts to deed the Buena Vista lands was a fraud. Rhonda Pope a great granddaughter of one of the Oliver families occupying the original Rancheria, (Louie Oliver and Annie Oliver, the original fee owners, who had been originally deeded the Buena Vista fee lands from the federal government), then filed a lawsuit against DonnaMarie Potts. [See the attached Exhibit "8" hereto.] This lawsuit was based on the fact that DonnaMarie Potts was not, and never was a member of any "Buena Vista Rancheria of Mewuk Indians" if in fact such a group or band existed at all.

A copy of the administrative determination that DonnaMarie Potts was not entitled to be the tribe, band or group or even a member, let alone "spokesperson" for or in control of the "tribe" community or band even though she had previously caused it to be recognized and acknowledged by the B.I.A. That disqualifying letter is attached hereto as EXHIBIT "9".

That lawsuit was settled by an illegal revenue sharing agreement between Potts and Pope [see attached EXHIBIT "10" hereto] to share the millions of dollars provided by outside non-Indian gambling investors and also to continue to share revenue between and amongst them, that is, the receipt of over one million dollars [$1,000,000] a year distributed to them by the California Tribal Gaming Revenue Sharing Trust Fund as well as all the federal grant monies provided to them because of this fictional, but recognized or improperly acknowledged, "tribe, group, community or band" Potts has called the "Buena Vista Rancheria of MeWuk Indians." As set out in the History of the Buena Vista Rancheria the family of one of the original occupants and assignees of the original Rancheria John Oliver, Louie Oliver's brother and his descendants were improperly excluded. These descendants of John Oliver are the most important Indian persons and descendants of the original assignees and occupants of the Buena Vista Rancheria, they are the living grandchildren of John Oliver. Rhonda "Morningstar" Pope is the daughter of Jesse "Flying Cloud" Pope who had relinquished and deeded all interest he might have in the fee lands deeded to Louie and Annie Oliver, in 1975. See the attached EXHIBIT "K" to the history of the 67.5 acre Buena Vista fee lands.

The interested party Appellants herein have filed this appeal to the Secretary of Interior to require a proper and final determination of the eligibility of the Buena Vista fee lands . eligible "Indian Lands" for any form of class II or class III gaming activity under the Indian Gaming and Regulatory Act [I.G.R.A.] 25 U.S.C. 2701 et.seq. This parcel of fee land is threatened to be used to conduct class III gambling by this improperly recognized Buena Vista Rancheria of MeWuk Indians and to be conducted on the ineligible Buena Vista fee lands.

In addition, because it clearly appears from the record that the fee lands at Buena Vista are not eligible "Indian Lands" and that an improper tribal "site-specific" gaming ordinance and a "site-specific" tribal-state class III gaming compact was already recently and improperly approved, Appellants request that both these unlawful approvals be rescinded immediately until such time as an Indian Lands eligibility determination is made.

CONCLUSION

The only way a lawfully recognized Indian tribe, band or community could operate any class II or class III gambling (or gaming) casino on the 67.5 acres of fee owned lands commonly called Buena Vista would be to have those lands brought into trust pursuant to 25 U.S.C. section 2719 as an exception to the prohibition of 25 U.S.C. 2703 against gaming on lands acquired after October 1988.

In addition, in light of the recent U.S. Supreme Court decision in Carcieri v. Salazar [Kempthorne] 555 U.s. _____ [2009] any Indian tribe, band or community seeking to bring such lands into trust pursuant to the Indian Reorganization Act of 1934, [25 U.S.C. 464, 479] would have had to be ***"under federal jurisdiction"*** as of the date of that Act.

The Secretary has to this date failed and neglected to make the Indian Lands eligibility determination for these Buena Vista Lands as required by the Indian Gaming and Regulatory Act, 25 U.S.C. 2703 or 25 U.S.C. 2719. These interested persons have standing to appeal the failure of the Secretary of Interior to make this determination and they have appealed herein pursuant to 25 C.F.R. 2.2, 2.8, 2.9 and 2.10. These interested persons have standing to bring this administrative appeal. See for example Koneag, Inc. Village of Uyak v. Andrus [D.C. Circ. 1978] 580 F.2d 601. See also Lujan v. Defenders of Wildlife [1992] 504 U.S. 555 and Friends of Earth v. Laidlaw Environmental Services [2000] 528 U.S. 167, 183.