STOP THE CASINO 101 COALITION
The Voice of the People

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January 25, 2011

Governor Jerry Brown
State Capitol Building
Sacramento, CA 95814

Ms. Kamala Harris
California Attorney General
1300 I Street, Suite 1740
Sacramento, CA 94244

Re: Federated Indians of the Graton Rancheria

Dear Governor Brown and Attorney General Harris:

We write to express our concerns about the current attempt by the Federated Indians of the Graton Rancheria (the "Graton"), in partnership with a Las Vegas casino operator, to bring Las Vegas style gambling to the urban Bay Area on lands historically governed by and still subject to state law. We urge you to challenge the wrongful assertion of Indian sovereignty over this state-governed site and to refuse to grant the Graton a compact to operate there.

Stop the Casino 101 Coalition (the "Coalition") is a community group formed in opposition to the proposal by the Graton, and their partner, Station Casinos, Inc. of Las Vegas, to establish an Indian casino in Sonoma County, on lands adjacent to Rohnert Park, just blocks from densely populated housing developments, commercial businesses, and Highway 101. The Coalition is comprised of hundreds of residents in the area surrounding the subject land and speaks for the wider population which overwhelmingly opposes this project.

On October 1, 2010, the United States agreed to accept conveyance of title to the subject site in trust for the Graton, and deeds were recorded October 4. Also on October 1, 2010, the National Indian Gaming Commission (the "NIGC") approved a management contract between the Graton and Station Casinos for Indian gaming on the subject site. Approval of the contract effectively constituted an assertion of general federal jurisdiction, and a denial of continued state control, over the site. Although the lands in question have been under state jurisdiction and not Indian jurisdiction since 1850 and although the state has not ceded jurisdiction over this parcel to the Federal

government, the United States Department of Interior and the Graton claim that they not only obtained title to the site but also somehow ousted the state of jurisdiction over the site and that they now govern land use and gambling activities on the site. This is not the law, and the state should assert its interests.

History of the Graton

Issues of sovereignty can be resolved only on the basis of historical facts, and the facts here are well-established. Starting in the late 1700s and continuing until the mid-1830s, the Spanish missionaries established settlements for Indians around the state. In stark contrast to the English on the East Coast, the Spanish missionaries settled among the Indians rather than apart from them. The Spanish did not enter into any treaties with Indians, did not create reservations, and did not recognize Indian sovereignty. Rather, Spanish settlers claimed all lands on behalf of the King of Spain.

In 1823, the Spanish ceded control of California lands to the Mexicans, and the Mexican government assumed control of all lands. Again, the Mexicans neither made any treaties with Indians, nor established Indian reservations, nor recognized Indian sovereignty over any lands.

In 1848, the Mexican government ceded Alta California to the United States in the Treaty of Guadalupe Hidalgo. The United States took full sovereignty, not subject to any treaties with any Indian tribes. In 1850, Congress admitted California into the Union, transferring general sovereignty to the state. Contrary to many other Admission Acts for western states, the California Admissions Act did not contain any reservation for Indian lands. Nor did California take its sovereignty subject to any existing treaties with Indians.

In 1851, agents under the direction of President Fillmore negotiated 18 treaties with California Indian groups, setting aside huge tracts of lands for small numbers of Indians. But the state objected to these treaties, and the Senate refused to ratify them. Thus, the Federal government refused to recognize the sovereignty of those tribes over any lands in the state. Over the next fifty years, the Federal government belatedly established a small number of modestly-sized reservations around the state, but none was established in Sonoma County.

The history of California rancherias began in 1906. Congress commissioned a report on the condition of California Indians, and an attorney named C.E. Kelsey visited all of the Indian settlements in the state. His report indicated that the condition on most Indian settlements was poor, and he recommended that rancherias be established. These would be small settlements on which small parcels of 5 to 10 acres would be

assigned to individual Indian families. Significantly, since most state lands were already settled, he noted that Congress would need to purchase settled lands. (Indian reservations had always been on unsettled lands.) Kelsey specifically stated that he was not recommending the creation of reservations. "Your special agent is inclined to object strongly to anything in the nature of reservations.... The day has gone by in California when it is wise to herd the Indians away from civilization..." Rather, rancherias would be established among settled "white" communities where the Indian residents could also work.[1]

Congress immediately followed Kelsey's recommendation, and began to set aside funds annually for the creation of rancherias. Kelsey never envisioned that these lands would be subject to Indian sovereignty. Rather, rancheria lands would remain under state jurisdiction. DOI acknowledged this explicitly in a 1912 letter. An Indian school in Laytonville had been burglarized and the Indian Superintendent had asked the Office of Indian Affairs in Washington for instruction. The Assistant Commissioner wrote back that the state had jurisdiction over the lands. "Inasmuch as the lands occupied by these Indians were purchased from private individuals while same were under the jurisdiction of the State of California, said jurisdiction would continue until such a time as the State ceded its police jurisdiction." A copy of the letter is enclosed.

In 1921, the Office of Indian Affairs purchased what would become known as the Sebastopol Rancheria or the Graton Rancheria (neither are Indian names–Sebastopol is Russian and Graton is English). The site consisted of 15.45 acres of land about three miles northwest of Sebastopol. The land had previously been owned by "white" settlers, and had been under state governance. Title to the Graton Rancheria was not taken in trust. Rather, the government held fee title. Purchase documents indicated the land was intended for the use of Indians from the Marshall and Sebastopol area, but did not define them by any tribal name or indicate they were a tribe. According to BIA documents, no one lived on the Graton Rancheria from 1921 to 1937. From 1937 to 1966, no more than a half dozen Indians total lived on the Graton Rancheria. The residents had varying amounts of Indian heritage, and were from various areas in the state, at least one being from as far away as Siskiyou. Some were members of existing tribes. The residents of the rancheria never organized as a tribe.

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[1] Kelsey used the Spanish term "rancheria" to denote a small ranch. In the 1980s, Indian attorneys began using the term to refer to the people who lived on those lands. That usage is inconsistent with the historical meaning of the term, and is an improper attempt to create tribes where none existed.

In the 1950s, the BIA proposed distributing rancherias to their Indian residents, and the three residents of the Graton Rancheria voted to end federal ownership and to take individual ownership. The three further wrote to their Congressman, John Scudder, and to BIA to express their support for such a bill. In 1958, Congress passed the California Rancheria Act, authorizing distribution of rancherias, including the Graton Rancheria, to Indian residents. A Senate Report on the bill provides details on each Rancheria, and under Graton Rancheria reads, "The group is not organized either formally or informally." 85 Congress, 2nd Session, Senate Report No. 1874, p. 24. In other words, the residents of the Graton Rancheria had not formed any sort of self-government, either under the Indian Reorganization Act of 1934 or otherwise and had not exercised any sort of sovereignty over the land. The property was distributed to the three residents (or their heirs) without charge in the 1960s.

About 1992, a group of Indians formed as the descendants of Indians who had lived in the areas now known as Marin and Sonoma Counties, and they called themselves the Federated Coast Miwok. In February 1995, the Federated Coast Miwok submitted to the Secretary a petition for recognition as a tribe. The BIA informed the Federated Coast Miwok that they likely would not qualify for restored recognition under administrative regulations then in place.

The Federated Coast Miwok identified the Graton Rancheria as a land site to which potential members had some claim, and they changed their name to the Federated Indians of the Graton Rancheria. They then sought Congressional "restoration" of recognition of the tribe under the theory that Congress had terminated their recognition and that only Congress could restore it. This was a fiction since the residents of the Graton Rancheria had not been a tribe either before or after they resided on the site.

The Graton Rancheria Restoration Act was passed as part of the Omnibus Indian Advancement Act of 2000, in the closing days of the 106th Congress and the Clinton Administration. The Act had been introduced by Lynn Woolsey originally in August 1998 during the 105th Congress and again in March 1999 during the 106th Congress, both times with restrictions against gaming on any lands to be purchased. Further, at a Committee hearing in May 2000, the tribal Chairman, Greg Sarris, testified that the tribe was foregoing the right to conduct gambling, and affirmed that the tribe "did not want to develop the land for casinos." The bill recognized the Graton as a tribe for purpose of receiving of federal benefits, but not as a sovereign. The Committee Report made clear that Congress did not intend that placement of property into trust would preempt State law. The Committee wrote: "This bill is not intended to preempt any State, local, or tribal law." (Report 106-677, p.3.)

Thus, the Graton never existed as a tribe until 2000 and has never exercised sovereignty over any land, and Congress intended only to provide federal benefits to the Graton, not to make them sovereign over newly-purchased lands.

Law on Indian Sovereignty

The law imposes a number of important limits on Indian sovereignty. The general rule is that a state has primary jurisdiction over all land within its boundaries. *South Dakota v. Yankton Sioux Tribe*, 522 U.S. 329, 333 (1998). The federal government can obtain sovereignty over land within state borders in only three ways: (1) by reserving jurisdiction over the affected property upon admission of the state into the Union; (2) pursuant to the Enclaves Clause of the United States Constitution whereby a state consents to exclusive federal jurisdiction when the Federal government purchases property for certain specified uses; and (3) by state cession of jurisdiction, exclusive or partial, to the Federal government. See *Coso Energy Developers v. County of Inyo* (2004) 122 Cal.App.4th 1512; *Arizona v. Manypenny*, 445 F.Supp. 1123, 1125-26 (D.Ariz. 1977). If the Federal government obtains title to land within a state's borders through purchase or otherwise, but does not follow the procedures to obtain sovereignty, the federal government holds title like an ordinary landowner, and state law continues to govern the site.

Federally-owned Indian lands are treated no differently than federally-owned non-Indian lands. Most Indian lands were held as such at the time a state was created, and jurisdiction was reserved by the Federal government whether by treaty to which the state took subject, or by express reservation in the Congressional Acts creating the state. Thus, Indian sovereignty over such land has been historically retained. But where this is not the case, the Federal government cannot obtain general sovereignty over the land absent an act by the state Legislature to cede such jurisdiction. California has ceded land for use by an Indian tribe only once, in 1911, when the Legislature ceded jurisdiction over lands in Riverside County to the Federal government for use by the Soboda Indians. Statutes of 1911, Ch. 675. See Govt. Code §111(g).

Here, the Federal government has not obtained sovereignty over the subject site. It did not reserve jurisdiction over these lands on admission of the state. Nor has the state ceded jurisdiction either under the Enclaves Clause or otherwise. Nor is this an issue of pre-emption. As seen above, Congress did not intend the Graton Act to pre-empt state or local law. Further, the doctrine of Federal pre-emption applies only where the tribe already has jurisdiction and is used only to resolve competing claims. It is not a basis for creating new sovereign governments.

Some cases have emphasized that Indian sovereignty must be "retained," "inherent" and "historical." *United States v. Wheeler*, 435 U. S. 313 (1978); *Atkinson*

Trading Co. v. Shirley, 532 U.S. 645 (2001). Here, the Graton have no historical existence as a tribe. The residents of the Graton Rancheria did not organize as a tribe, and did not exist as a tribe. They could not and did not exercise jurisdiction as a tribe.

Even where Indian sovereignty was once retained, it must be continuously exercised or the right to exercise it can be lost. Thus, in the recent case of *City of Sherrill v. Oneida Indian Nation*, 544 U.S. 197 (2005), the court held that where a tribe repurchased land within its historic reservation that it had sold off centuries earlier, the tribe did not thereby regain sovereignty. The court recognized the settled expectations of residents and landowners in and around the area, and the disruption that would be caused to settled expectations by assertion of a long-dormant claim to sovereignty. Here, the Graton never had sovereignty, and the settled expectations of nearby residents and landowners are that much stronger. Therefore, disruption to them would be that much greater.

Further, the doctrine of Indian sovereignty is premised on the fact that Indians exist in separate political communities. The first case to recognize Indian sovereignty emphasized that Indian territory was "completely separated from that of the states." *Worcester v. Georgia*, 31 U.S. 515, 557 (1832). "The Indian nations had always been considered as distinct, independent, political communities, retaining their original natural rights..." *Id.* The Indian communities were physically separate and there was little interaction between Indians and non-Indians. The separateness of Indian communities was at the core of U.S. Supreme Court decisions which defined the nature of Indian sovereignty.

The subject parcel, on the other hand, is not in any way a separate political community, nor physically separate from the surrounding community. It is a small parcel in the midst of suburban Bay Area. The land is surrounded on at least three sides by urban development, including some high-density housing and some commercial developments. It is just 500 yards from Highway 101. Part of the site is within the City of Rohnert Park, inside a planned development. Because much of the land is wetlands, only a small parcel can be developed. The Graton plan to use the site solely for commercial purposes, and for just a single business – a casino catering to the non-Indian community. There is no plan to use the site as a residential community.

The assertion that the site is a separate community over which the Graton should exercise sovereignty is an artifice and a sham designed to evade state law applicable to all others in the community. To allow such would be to condone abuse of the notions of Indian sovereignty. Federal Indian law does not allow a tribe to feign sovereignty over a parcel in the middle of Bay Area merely to gain an exemption from the state's gambling and zoning laws applicable to all surrounding lands.

Illegality of Current Actions

When the voters approved Proposition 1A, in March 2000, they were told that Indian casinos would be on Indian lands, primarily in remote, rural parts of the state. The Voter Pamphlet itself made this clear. In rebuttal to claims made that Proposition 1A would put gambling casinos right in everyone's backyard, the proponents wrote: "Proposition 1A and federal law strictly limit Indian gaming to tribal land. The claim that casinos could be built anywhere is totally false. . . . The majority of Indian Tribes are located on remote reservations . . . ." The voters never intended to allow Indian gaming in or near cities or heavy concentrations of population, and the proposal by the Graton and Station Casinos violates that intent.

As stated above, on October 1, 2010, the Acting Regional Director of the BIA accepted conveyance of title to the subject lands in trust for the Graton, and on October 4, 2010, deeds were recorded. Also on October 1, 2010, the Chairwoman of the NIGC approved a management contract between the Graton and SC Sonoma Management LLC to manage a casino on the site. This approval was given pursuant to the Indian Gaming Regulatory Act ("IGRA"), and constitutes an assertion that the lands are Indian lands and have passed from the jurisdiction of the state to the jurisdiction of the Graton.

Given the facts and the law reviewed above, the assertion of federal and tribal jurisdiction over this site is unlawful and improper. Rather, the October 4, 2010 transfer of the land to the Federal government in trust for the Graton did not have any effect on the state's jurisdiction over the site. The state had jurisdiction before transfer of title, and continues to have jurisdiction after transfer of title. IGRA has no application to the site, and the state has no obligation under IGRA to negotiate a compact with the Graton to allow gaming at this site. State and local gaming and land use laws remain in effect, and should be enforced.

We therefore request that the State assert its sovereignty over this land, and demand that the NIGC revoke its approval of the management contract for a casino at this site. If the NIGC refuses, the state should institute court action. We further request that the Governor refuse to negotiate any compact to allow Indian-governed gambling at the site.

We note that by letter dated May 1, 2006, Governor Schwarzenegger interpreted the Graton Act as satisfying the "restored lands" requirement under IGRA. However, that letter did not address the prior questions of whether the land remained under state jurisdiction and whether the land was even subject to IGRA.

We further note that we brought suit against the Secretary in 2008 when he approved the application to take the land in trust. In the suit, we had sought a declaration that the transfer of title would not affect the sovereignty over the site. The court dismissed the case as being premature and did not reach the merits. The court essentially held that the case would not be ripe until the government took action under IGRA. The approval of the management agreement is such an action, and the dispute is now ripe for resolution.

We appreciate your consideration of this request.

Very truly yours,

Reverend Chip Worthington

Marilee Montgomery

Enc.

cc. U.S. Senator Dianne Feinstein
U.S. Senator Barbara Boxer
Congresswoman Lynn Woolsey
State Senator Mark Leno
Assemblymember Jared Huffman
Sonoma County Board of Supervisors
Sonoma County Counsel
City of Rohnert Park
Jonathan Renner, Legal Affairs Secretary

1 253/12

REFER IN REPLY TO THE FOLLOWING: 6-1100 ADDRESS ONLY THE COMMISSIONER OF INDIAN AFFAIRS

Education-
Law & Order
24692-1912
P L H

DEPARTMENT OF THE INTERIOR
OFFICE OF INDIAN AFFAIRS
WASHINGTON

JUN 19 1912

Jurisdiction.

Rec'd JUN 26 1912

Mr. Thomas B. Wilson,

Supt. Round Valley School.

Sir:

The Office is in receipt of your letter of March 2, 1912, wherein you ask to be advised what action you should take relative to one Fox Burns breaking into the school house at Laytonville, California.

Inasmuch as the lands occupied by these Indians were purchased from private individuals while same were under the jurisdiction of the State of California, said jurisdiction would continue until such a time as the State ceded its police jurisdiction. It is not believed that the State did cede jurisdiction and, if the facts in your possession bear out this assumption, you should call the theft in question to the attention of the proper State authorities for prosecution.

Respectfully,

Assistant Commissioner.

6-HMS-10 File