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MONTGOMERY, FRED SOARES, JAMIE WALLACE,
8 CHIP WORTHINGTON and LINDA WORTHINGTON

9
10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA

12 STOP THE CASINO 101 COALITION, ROBERT)
13 AHERNE, AMY BOYD, LISA CATELANI, FRANK)
EGGER, MICHAEL ERICKSON, MICHAEL)
14 HEALY, LINDA LONG, LISA McELROY, PAM MILLER,)
MARILEE MONTGOMERY, FRED SOARES, JAMIE)
15 WALLACE, CHIP WORTHINGTON and LINDA)
16 WORTHINGTON,)

17 Plaintiffs,)

18 v.)

19 DIRK KEMPTHORNE, Secretary of the United States)
Department of the Interior; CARL J. ARTMAN, Assistant)
20 Secretary of the United States Department of the Interior for)
Indian Affairs; UNITED STATES DEPARTMENT OF)
21 THE INTERIOR; JERRY GIDNER, Director, Bureau of)
Indian Affairs, Department of the Interior, DALE)
22 MORRIS, Pacific Regional Director, Bureau of Indian)
23 Affairs, Department of the Interior; and UNITED STATES)
BUREAU OF INDIAN AFFAIRS,)
24)

25 Defendants,)

26 _____)
27 FEDERATED INDIANS OF GRATON RANCHERIA,)

28 Intervenor.)
_____)

) **Civ. No. C 08-02846 JCSI**
)
) **[PROPOSED] FIRST AMENDED**
) **COMPLAINT FOR**
) **DECLARATORY AND**
) **INJUNCTIVE RELIEF**

) **Petition Filed: June 6, 2008**

) **Date: February 27, 2009**

) **Time: 9:00 a.m.**

) **Judge: Hon. Susan Illston**

) **Dept: 10**

INTRODUCTION

1
2 1. This is an action under the Administrative Procedure Act (“APA”), 5 U.S.C. sections 701-
3 706, and related laws seeking review of final agency action by officials of the United States Department
4 of the Interior (collectively, the “Secretary”) on April 18, 2008, approving an application by the Federated
5 Indians of the Graton Rancheria (“FIGR”) to accept into trust a 254-acre parcel of land adjacent to the
6 City of Rohnert Park in Sonoma County, California (“the Property”). The Secretary approved FIGR’s
7 application pursuant to the Graton Rancheria Restoration Act of 2000 (“Graton Act”), Public Law 106-
8 568 at Title XIV, 25 U.S.C. §1300n-1, *et seq.*, which provides in pertinent part that “[u]pon application
9 by the Tribe, the Secretary shall accept into trust for the benefit of the Tribe any real property located in
10 Marin or Sonoma County . . . after the property is conveyed . . . to the Secretary and if . . . there are no
11 adverse legal claims to such property” *Id.* at §1300n-3(a).

12 2. The Graton Act provides that lands selected by FIGR for trust status shall become part of
13 FIGR’s reservation and be exempt from local, state, and federal taxation, but it does not alter California’s
14 jurisdiction over the Property. *Id.* § 1300n-3(b), (c) and (d). The Graton Act limits lands “eligible for
15 trust status” to “Indian owned fee land held by persons listed as distributees or dependent members in the
16 distribution plan approved by the Secretary on September 17, 1959” or their “Indian heirs or successors in
17 interest.” *Id.* at § 1300n-3(b).

18 3. Since the State of California was admitted into the Union, the Property was never an
19 Indian reservation, nor did FIGR ever hold a reservation elsewhere. The Property is governed by state
20 law, and has been governed by state law since the State of California was admitted into the Union. The
21 Property is currently owned by subsidiaries of Stations Casinos, Inc., a large, publicly held, casino
22 operator headquartered in Las Vegas, Nevada.

23 4. Plaintiffs currently benefit from California laws which set limits on land use and
24 development, and which prohibit casino gambling, on the Property. If the Property were taken into trust
25 and FIGR were *thereby* exempted from state laws, including state land use, environmental protection and
26 water quality laws and prohibitions against casino gambling, plaintiffs’ settled expectations as residents
27 and business owners in the area would be disrupted.

28 5. While the Graton Act does not diminish state sovereignty, a controversy has arisen

1 because the Secretary's approval letter of April 18, 2008, provides that the Property shall be taken into
2 trust for the purpose of a gambling casino. FIGR plans to construct a hotel and casino complex totaling
3 over 760,000 square feet and to operate at least 2,000 slot machines at the site. Although such a Nevada-
4 style casino would be illegal under state law, the Secretary and FIGR claim that if the Secretary takes title
5 to the Property in trust for FIGR, FIGR would not be subject to state laws regulating land use and
6 forbidding gambling at the site.

7 6. Plaintiffs ask this Court to resolve the controversy that has arisen regarding the effect and
8 lawfulness of the Secretary's action. First, plaintiffs seek from this Court a declaration that the trust
9 acquisition would not have extinguished state jurisdiction or created tribal sovereign jurisdiction over the
10 Property. Nothing in the Graton Act authorizes such an outcome.

11 7. Second, plaintiffs ask this Court to narrowly construe the effect, or alternatively to review
12 the lawfulness, of the Secretary's action under constitutional law. Plaintiffs request a declaration that
13 unless construed not to divest the state of sovereignty over the Property, the Graton Act and the
14 Secretary's decision thereunder violate the delicate balance between state and federal powers established
15 by the Equal Footing Doctrine, the Admissions Clause, and the Tenth Amendment of the Constitution.
16 Once a state has been admitted into the Union, it has plenary jurisdiction over all lands within its borders.
17 The Constitution provides no power to the federal government to diminish the state's plenary jurisdiction,
18 even when the federal government obtains title to land, except with the consent of that state. None of the
19 enumerated powers of Congress, including those over Indian affairs, allow Congress to take into trust --
20 and eliminate state jurisdiction over -- land that has no prior connection to the tribe, where, as here, the
21 state did not consent to the withdrawal of its jurisdiction. Therefore, the Secretary's decision did not
22 extinguish California's jurisdiction over the Property, nor did it confer an FIGR sovereignty over the
23 Property.

24 8. Third, plaintiffs ask this Court to declare that the Secretary's action, even if otherwise
25 lawful, exceeds the scope of the authority conferred on him by the Graton Act. The Property is
26 encumbered by an "adverse legal claim," namely a contractual obligation restricting use of the Property to
27 open space and requiring the payment of taxes for a minimum of nine more years under Williamson Act
28

1 contracts with Sonoma County.¹ Thus, the Property was ineligible, under the explicit terms of the Graton
 2 Act, for trust status. This adverse legal claim, enforceable not only by the County but also by its citizens,
 3 bars the Secretary's trust action under the plain language of the Graton Act. 25 U.S.C. § 1300n-3(a). In
 4 addition, the Property is ineligible for trust status because it was never Indian-owned fee land as required
 5 by the Graton Act. 25 U.S.C. § 1300n-3(b).

6 9. Finally, based on the foregoing constitutional and statutory grounds, plaintiffs also ask this
 7 Court for a declaration that the Secretary's action did not transform the Property into "Indian lands" for
 8 the purposes of the Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. §§ 2203, 2710 and 2719.

9 10. Based on the above claims, as explicated more thoroughly below, plaintiffs ask this Court
 10 to grant declaratory relief, including, but not limited to, a declaration that the Secretary's action would not
 11 divest California of jurisdiction over the Property, and to enjoin the Secretary's action.

12 JURISDICTION AND VENUE

13 11. This action arises under the laws of the United States, including Articles I, IV, and VI and
 14 the Tenth Amendment of the United States Constitution, the Graton Act (25 U.S.C. § 1300n-1 *et seq.*),
 15 the APA, and the jurisdictional statutes enumerated in the following paragraph of this Complaint.

16 12. This Court has original subject matter jurisdiction over this matter pursuant to 28 U.S.C.
 17 §§ 1331 (federal question), 1346 (United States as defendant), 2201 (declaratory judgment) and 2202
 18 (further relief), and 5 U.S.C. § 701 *et seq.* (review of final agency action) because (1) the action arises
 19 under the Constitution and laws of the United States; (2) defendants are sued in their official capacities as
 20 officers of the United States; (3) the action seeks declaratory relief; (4) the action seeks to set aside the
 21 Secretary's action approving FIGR's fee to trust application under 5 U.S.C. § 706(2) for violations of the
 22 Graton Act, 25 U.S.C. § 1300n-1 *et seq.*; and (5) plaintiffs also seek further equitable relief restraining
 23 defendants from violating such laws. The Secretary's administrative decision challenged herein is a final
 24

25
 26 ¹ The Williamson Act, California Govt. Code § 51200 *et seq.*, allows agricultural
 27 landowners and local governments to enter into contracts that reduce tax obligations for the
 28 landowner in exchange for a ten-year, rolling commitment to devote the land to farming and
 other open space uses. The Secretary's action purports to negate the landowner's obligation to
 continue to pay taxes and farm the land. 25 U.S.C. § 1300n-3(d).

1 agency action subject to judicial review under the APA, 5 U.S.C. § 704.

2 13. Venue is proper under 28 U.S.C. § 1391(b) and (e) in that a substantial part of the events
3 giving rise to plaintiffs' claim occurred, and the Property that is the subject of the action is situated, in
4 this judicial district, and at least one defendant, and all plaintiffs, reside within this judicial district.

5 **NATURE OF ACTION**

6 14. This action seeks judicial review under the APA, 5 U.S.C. §701 et seq., of a final agency
7 action by the Secretary to accept into trust the subject Property for the benefit of FIGR, seeking this
8 Court's judgment (1) declaring that the trust acquisition under the Graton Act would not extinguish state
9 jurisdiction or create tribal sovereignty over the Property; (2) declaring that the Property does not qualify
10 for gaming unless authorized by California law because mere trust status does not make these lands
11 eligible for gaming activities under IGRA, 25 U.S.C. §§ 2703(4), 2710(b), 2710(d) and 2719; (3) setting
12 aside the Secretary's action approving FIGR's fee to trust application as arbitrary and capricious under 5
13 U.S.C. § 706 for violations of the Graton Act, 25 U.S.C. § 1300n-1 et seq.; and (4) should the Court hold
14 that the Secretary's action has extinguished state jurisdiction and created tribal sovereignty over the
15 Property, declaring that the Graton Act and the Secretary's action are unconstitutional as violative of the
16 Admissions Clause, U.S. Const., art. IV, sec. 3, the Equal Footing Doctrine, and the Tenth Amendment,
17 U.S. Const., amend X. Plaintiffs also seek further equitable relief restraining defendants from violating
18 the law as declared by the Court.

19 **PARTIES**

20 15. Plaintiff Stop the Casino 101 Coalition (the "Coalition") is an unincorporated association
21 of citizens who live near the Property, own land or businesses near the Property, or have other interests
22 directly affected by FIGR's proposed use of the Property, and whose interests are currently protected by
23 the laws of the State of California. The Coalition was founded in August of 2003 as a non-sectarian
24 group, by long-time Rohnert Park resident Chip Worthington and other concerned Sonoma County
25 citizens, in response to FIGR's plans to build an urban casino on the outskirts of the City of Rohnert Park.
26 The Coalition opposes the Secretary's acceptance of lands into trust for the purpose of a gambling casino
27 because such action strips the Coalition and its members of the protection of California's laws regulating
28 land and water use and development and forbidding Nevada-style gambling, contrary to plaintiffs'

1 justifiable expectations. If approved, the pending casino project would cause substantial harm to the
2 natural environment and the City of Rohnert Park through water contamination, increased flooding,
3 traffic congestion and air pollution, and the degradation of public spaces and roads, and would therefore
4 cause severe social, economic, and quality-of-life impacts on the area and its residents.

5 16. Plaintiff Robert Aherne is a resident of Rohnert Park and a member of the Coalition. He
6 resides at 4575 Fairway Drive, located approximately three miles from the Property. He has lived at this
7 location for seven years. Mr. Aherne will suffer injury from the proposed casino project due to the
8 increased traffic congestion, crime and noise , air and water pollution associated with casino operations.
9 He may also suffer economic injury depreciation in the value of his property.

10 17. Plaintiff Amy Boyd is a member of the Coalition and a resident of the neighboring town of
11 Cotati, California, where she lives at 5822 Lowell Court. Her home is approximately 1.5 miles from the
12 proposed casino site. She purchased her home in 2001 in reliance on its rural-residential zoning
13 classification. Ms. Boyd obtains her water from a nearby well which she also owns. She has three means
14 of egress from her home: Stony Point Road, which abuts the casino project, Redwood Highway and
15 Route 116. These roads will serve as the main secondary routes to the proposed casino project even
16 though they are unsafe. There are no traffic lights where Lowell Avenue, running through Lowell Court,
17 intersects with Stony Point Road. Similarly, there are no traffic lights where Derby Lane, the only road
18 that connects Lowell Court with Route 116, intersects Route 116. The traffic congestion associated with
19 operation of the proposed casino project will block, or significantly impede, Ms. Boyd's ability to exit
20 and enter her property. Ms. Boyd may also suffer economic injury because the casino will degrade her
21 water supply and deplete the water in her well.

22 18. Plaintiff Lisa Catelani is a member of the Coalition and lives approximately 2.5 miles
23 from the pending casino site, at 7300 Adrian Drive in Rohnert Park, California. She has resided in this
24 family-friendly neighborhood for eighteen years. Lisa Catelani will suffer harm to her quality of life due
25 to the drastic increase in traffic congestion and noise pollution associated with the pending casino project.

26 19. Plaintiff Frank Egger is a member of the Coalition and has owned property in the vicinity
27 of the Property for over thirty years. Mr. Egger will suffer environmental and economic injury because
28 the casino will cause traffic congestion, noise and air pollution, degraded ground water and potential

1 depreciation in the value of his property.

2 20. Plaintiff Michael Erickson is a resident of Rohnert Park and a member of the Coalition.
3 His home is located approximately three miles from the proposed casino site at 1422 Mariner Place. His
4 work requires him to commute weekly to the San Francisco area using Highway 101, which the proposed
5 Casino would congest with substantially increased traffic. Mr. Erickson will suffer injury because the
6 casino project will impair the safety and increase the time and cost of his commute.

7 21. Plaintiff Michael Healy is a member of the City Council for the neighboring City of
8 Petaluma and a member of the Coalition. He and his family reside at 304 Kentucky Street in Petaluma,
9 California. Their home is located approximately nine miles south of the proposed casino. Mr. Healy's
10 daughter attends Montgomery High School in Santa Rosa, approximately eleven miles north of the
11 proposed casino. Mr. Healy and his wife drive their daughter to school daily on Highway 101, which the
12 proposed casino will congest with substantially increased traffic, impairing the safety and increasing the
13 time and cost of their commute.

14 22. Plaintiff Linda Long is a member of the Coalition and resides at 944 Helene Court in
15 Rohnert Park, California. Her home is located approximately two miles from the pending casino project.
16 Ms. Long has lived at this property for over twenty years. In 2002, she bought a condominium located at
17 1059 Golf Course Drive in Rohnert Park. This property is located 2.6 miles from the proposed casino
18 site. Both properties are located east of Highway 101, opposite the proposed casino site. Golf Course
19 Drive is the most direct route to Highway 101 from these properties. The junction of Golf Course Drive
20 and Highway 101 is the freeway exit nearest to the proposed casino. Ms. Long chose to settle in Rohnert
21 Park because it is a quiet, family-friendly neighborhood. She was attracted to this area because it has an
22 abundance of public spaces, such as parks and recreation areas. Ms. Long takes daily walks in Rohnert
23 Park through Honey Bee Park to Golis Park and back to her home via Golf Course Drive. Ms. Long
24 works for the Sonoma County Office of Education. Her job requires her to travel from her home in
25 Rohnert Park to Cotati and Santa Rosa, California up to three times a week. She commutes to these cities
26 via Petaluma Hill Road, the main thoroughfare in the Rohnert Park area, running along Highway 101.
27 The proposed casino will cause traffic congestion on these streets, diminishing Ms. Long's enjoyment of
28 her walks and impairing the safety and increasing the time and expense of her commute. Ms. Long may

1 also suffer economic injury because the casino may harm the value of her property.

2 23. Plaintiff Lisa McElroy is a resident of 4327 Primrose Avenue in an unincorporated area in
3 the vicinity of the proposed casino site. Ms. McElroy obtains her water from a shallow well. She will
4 suffer environmental and economic injury from the proposed casino because its operation will diminish
5 local groundwater supplies, increasing her pumping costs and potentially causing her well to run dry. Ms.
6 McElroy will also suffer injury to her quality of life due to increased flooding, traffic congestion, noise
7 pollution, water and air contamination, and water shortages that will result from the casino operation.

8 24. Plaintiff Pam Miller is a resident of 4306 Primrose Avenue in an unincorporated area in
9 the vicinity of the proposed casino site. She raises sheep, chickens and geese on her 2.5-acre property.
10 Ms. Miller also runs a construction business out of her home and has a landscaped garden on her
11 property. Ms. Miller pumps groundwater from her well to meet her domestic and farming water uses.
12 She will suffer environmental and economic injury if the casino goes forward because its operation will
13 significantly accelerate the depletion of her existing water supply and increase the cost of pumping water
14 in her well. Ms. Miller will also suffer injury to her quality of life due to increased flooding, traffic,
15 congestion, noise pollution, water and air contamination, and water shortages that will result from the
16 casino operation.

17 25. Plaintiff Marilee Montgomery is a member of the Coalition and resides at 152 Wilfred
18 Avenue in an unincorporated area less than one mile from the proposed casino project. She assists in
19 preparing the Coalition's reports and submitting its comments on the casino to public agencies. She
20 moved to the area fifteen years ago, and has occupied her Wilfred Avenue residence for fourteen years.
21 Ms. Montgomery chose this sparsely populated and rural neighborhood because she wanted a peaceful
22 and natural place to live. Ms. Montgomery accesses her home from Wilfred Avenue, which runs along
23 the northern edge of the proposed casino site. Her quality of life will suffer if the casino is built because
24 of the noise and air pollution and increased traffic congestion it will cause.

25 26. Plaintiff Fred Soares is a member of the Coalition and resides at 4319 Primrose Avenue in
26 an unincorporated area in the vicinity of the proposed casino site. Mr. Soares has lived on this property
27 for twenty-nine years. He pumps groundwater to irrigate his 2.5 acres, on which he grows crops and
28 raises pigmy goats, pigs, horses, steers and dairy cows. Mr. Soares will suffer both environmental and

1 economic injury to his property because operation of the casino in this area will accelerate depletion of
2 groundwater, impeding his ability to irrigate his crops and raise his farm animals. The casino's
3 threatened construction of vast parking lots and buildings in a flood plain will divert flood waters onto
4 Mr. Soares' nearby land, rendering it uninhabitable. He will also suffer injury to his quality of life due to
5 an increase in crime, traffic congestion and noise pollution associated with the casino project.

6 27. Plaintiff Jamie Wallace is a member of the Coalition and lives at 6611 Meadow Pines
7 Avenue, where she has resided for seven years. Her home is located approximately three miles from the
8 proposed casino site. She chose to live in Rohnert Park because it is a family-friendly community, with
9 parks and a school system. The proposed casino will harm her quality of life because it will drastically
10 and permanently change the rural character of her community, and increase traffic congestion and crime.
11 She may also suffer economic injury because the casino may depreciate the value of her property.

12 28. Plaintiff Reverend Chip Worthington is a founding member of the Coalition, an ordained
13 minister of the Assemblies of God, and the Pastor at Rohnert Park Assemblies of God Church.
14 Assemblies of God is located approximately two miles from the proposed casino project. Reverend
15 Worthington also resides in Rohnert Park. Rohnert Park Assemblies of God Church is located on a street
16 prone to flooding when there is heavy rainfall. For this reason, the local general plan and zoning prohibit
17 large-scale parking lots and structures in the area. If the casino facility is built on the proposed site, it will
18 result in the diversion of rainwater from the natural flood plain onto local streets, flooding the church's
19 street and impeding public access to the church.

20 29. Plaintiff Linda Worthington is a member of the Coalition and a home-maker. She lives at
21 8027 Mackay Court in Rohnert Park, which is located approximately three miles from the proposed
22 casino. She and her husband, Reverend Worthington, have lived in this home for nine years. If the
23 casino is built she will suffer injury to her quality of life due to an increase in crime, traffic congestion
24 and noise pollution.

25 30. Plaintiffs seek to maintain California's sovereignty over the Property to protect their
26 individual rights and those of their community. If FIGR were allowed to divest the state of its
27 sovereignty, and thereby gain the power to construct and operate the proposed Nevada-style casino
28 project, plaintiffs will lose the protection of existing state regulation over land uses, air and water quality,

1 traffic safety, and adequate law enforcement. Plaintiffs will suffer injury to their quality of life due to
2 traffic congestion, crime and noise pollution associated with casino operation, and economic injury due to
3 the resulting depletion of their groundwater, increased flooding, and potential depreciation of their
4 property values. Plaintiffs have also suffered procedural injury as citizens of Rohnert Park and Sonoma
5 County from the Secretary's action of taking the Property into trust because they have been denied the
6 opportunity to comment on the impacts of the casino project pursuant to the procedures normally required
7 for discretionary trust acquisitions.

8 31. Plaintiffs' interests in safe roads and neighborhoods, a clean and sustainable water supply,
9 and cities that are free from crime and blight are aligned with the interests of many other residents of the
10 County of Sonoma. Due to the location of their residences and places of business, plaintiffs will be
11 directly harmed by the Secretary's approval of FIGR's trust application. The Secretary's violation of the
12 Graton Act and United States Constitution have deprived plaintiffs of the ability to protect their rights and
13 their communities.

14 32. Defendant Dirk Kempthorne is the United States Secretary of the Interior (the "Secretary")
15 ultimately responsible for the Department of the Interior's approval on April 18, 2008 of FIGR's
16 application that defendant United States Bureau of Indian Affairs accept the Property into trust for
17 FIGR's use for a Nevada-style casino and associated commercial activities. Defendant Kempthorne is
18 sued in his official capacity.

19 33. Defendant Carl J. Artman is the former Assistant Secretary of the United States
20 Department of the Interior with responsibility for the Bureau of Indian Affairs who approved on April 18,
21 2008 FIGR's application that the United States Bureau of Indian Affairs ("BIA") accept into trust the
22 Property for FIGR's use for Nevada-style gambling and associated commercial activities. Defendant
23 Artman is sued in his official capacity.

24 34. Defendant United States Department of the Interior ("DOI") is the federal agency with
25 responsibility for overseeing the BIA and ultimately responsible for its approval of FIGR's application
26 that the Property be accepted into trust for FIGR's use for gambling purposes.

27 35. Defendant Jerry Gidner is the Director of BIA and responsible for defendant Artman's
28 approval of BIA's acceptance of the Property into trust for the benefit of FIGR's proposed gambling uses.

1 Defendant Gidner is sued in his official capacity.

2 36. Defendant Dale Morris is the Pacific Regional Director of BIA, and is responsible for
3 defendant Artman's approval of BIA's acceptance of the Property into trust for the benefit of FIGR's
4 proposed gambling uses. Defendant Morris is sued in his official capacity.

5 37. Defendant United States Bureau of Indian Affairs ("BIA") is an agency of the United
6 States government responsible for overseeing the United States government's programs and management
7 responsibilities with regard to Indian tribes and individuals and Indian lands within the United States, and
8 is ultimately responsible for defendant Artman's approval of FIGR's application to have the Property
9 accepted into trust.

10 38. The Secretary and defendants Carl J. Artman, the Department of the Interior, Jerry Gidner,
11 Dale Morris and the BIA are, collectively, the "Federal Defendants."

12 39. Intervenor Federated Indians of Graton Rancheria ("FIGR") is among the 562 tribes that
13 were recognized by the Federal government as sovereign Indian nations on December 5, 2003. By virtue
14 of its status as an Indian tribe, FIGR is eligible for funding and services from the BIA and has the
15 immunities and privileges available to other federally recognized tribes in its government-to-government
16 dealings with the United States.

17 40. FIGR filed a timely Motion to Intervene in this suit on October 2, 2008. Plaintiffs filed a
18 Statement of Non-Opposition on November 26, 2008, and this Court issued an order granting FIGR's
19 motion to intervene on December 15, 2008.

20 **CONSTITUTIONAL BACKGROUND**

21 41. Each state in the United States has plenary jurisdiction over all land within its borders, and
22 the Federal government has no power to unilaterally diminish a state's jurisdiction within its borders. If
23 the Federal government obtains title to land within a state's borders through purchase or otherwise, it
24 holds title like an ordinary landowner, and state law continues to govern the site unless the state cedes its
25 jurisdiction to the Federal government.

26 42. As the Supreme Court declared in *Pollard's Lessee v. Hagan*, 3 How. (44 U.S.) 212, 228,
27 229 (1845), each state is "entitled to the sovereignty and jurisdiction over all the territory within her
28 limits . . . [and to] maintain any other doctrine, is to deny that [the state] has been admitted into the union

1 on an equal footing with the original states.”

2 43. On September 9, 1850, Congress passed the California Admissions Act which admitted
3 California into the Union “on an equal footing with the original States in all respects whatever.” Thirty-
4 First Congress, Sess. I, ch. 50, 9 Stats. 452. Unlike the terms of many other state admission acts, the
5 California Admissions Act contained no exemption recognizing Indian rights over any lands within the
6 borders of the state, and the State did not take jurisdiction subject to any pre-existing Indian treaty rights.

7 44. The Tenth Amendment of the United States Constitution reserves to the states all powers
8 except those expressly delegated to the Federal government. While it has been recognized that the Tenth
9 Amendment does not pose a barrier to the full exercise of any power that has been granted to the Federal
10 government, the Federal government has no power to act unilaterally to divest a state of jurisdiction,
11 whether exclusively or partially.

12 45. The Commerce Clause of the United States Constitution (Art. I, Sec. 8, cl. 3) grants
13 Congress the power to “regulate Commerce with foreign Nations, and among the several States, and with
14 the Indian Tribes.” This clause is now viewed as the source of Congress’ power to govern Indian Affairs,
15 but it has never been held to allow Congress to take land into trust that has historically been under state
16 jurisdiction and to divest that state of its plenary jurisdiction over such land, without the state’s consent,
17 nor to vest that jurisdiction in an Indian group, or for that matter, in a foreign nation or another state.

18 46. Pursuant to these constitutional provisions, if the Federal Defendants take the Property
19 into trust for FIGR, neither the Federal government nor FIGR would gain sovereignty over the site unless
20 the State of California were to cede jurisdiction to the Federal government. The State of California has
21 not ceded such jurisdiction nor expressed any intent to cede such jurisdiction. As a result, state law
22 prohibiting casino gambling continues to apply to the Property, even after its acquisition by FIGR under
23 the Graton Act.

24 **STATUTORY BACKGROUND**

25 **The Indian Gaming Regulatory Act of 1988**

26 47. Large-scale casino gambling has been in existence for approximately twenty years. Its
27 rapid development began with the passage of the Indian Gaming Regulatory Act of 1988 (“IGRA”), 25
28 U.S.C. § 2701 *et seq.* The statute’s framework is based in part on a 1987 decision by the Supreme Court

1 that upheld the right of Indian tribes to offer such games in states which allowed some parties to conduct
2 them and did not prohibit the games outright. *See California v. Cabazon Band of Mission Indians*, 480
3 U.S. 202 (1987). This decision pertained to an instance where historic Indian title to lands to be used for
4 gaming was not in dispute.

5 48. IGRA subdivides gaming activities into three classes of games and provides for distinct
6 regulatory models for each class. 25 U.S.C. § 2703. Class I encompasses social games played for prizes
7 of minimal value and games involved in traditional Indian tribal ceremonies or celebrations. Class I
8 games are within the exclusive jurisdiction of the tribe. 25 U.S.C. § 2710(a)(1).

9 49. Class II games include bingo, lotto and non-banking card games that are either explicitly
10 authorized or not expressly prohibited by state law. 25 U.S.C. § 2703(7)(A). Class III games broadly
11 include “all other forms of gambling,” and thus include the mainstay of Nevada style casinos such as slot
12 machines and banked card games. 25 U.S.C. § 2703(8). Class II and Class III games are allowed only if
13 they may otherwise be conducted in the state. 25 U.S.C. § 2710(b), (d).

14 50. In order to conduct Class II gaming, the tribe must adopt an ordinance that is approved by
15 the National Indian Gaming Commission (“NIGC” or “Commission”). 25 U.S.C. §§ 2705, 2710(b), (c).
16 The Commission is required to approve the ordinance unless it concludes that it is not adopted in a
17 manner consistent with the tribe’s governing document. *Id.* Class II games are subject to oversight by
18 the Commission. 25 U.S.C. § 2710(b), (c).

19 51. Class III gaming may be conducted on Indian land subject to the negotiation of a Tribal-
20 State compact, which governs the manner in which such games are conducted on Indian land. In this
21 way, states, instead of the Federal government, were given a large regulatory role in the governance of
22 class III games. 25 U.S.C. § 2710(d). The compact must be entered into by the State and the Tribe and
23 approved by the Secretary. *Id.*

24 52. IGRA applies exclusively to “Indian lands,” as defined in the statute. 25 U.S.C. §§ 2701,
25 2703(4), 2710. In addition, section 11 of IGRA requires that the tribe exercise jurisdiction over the land.
26 25 U.S.C. § 2710. Section 2710(b) allows class II gaming on “Indian lands within such tribe’s
27 jurisdiction,” and subsection (d) allows class III gaming on Indian lands only if “the Indian tribe [has]
28 jurisdiction over such lands.” 25 U.S.C. § 2710(b), (d). Section 20 of IGRA further limits the

1 application of IGRA's gaming provisions to lands acquired by tribes before October 17, 1988. 25 U.S.C.
2 § 2719(a). Exceptions to the Section 20 prohibition are enumerated in the statute and include lands taken
3 in trust as part of an initial reservation and lands restored to an Indian tribe that is restored to Federal
4 recognition. *See generally* 25 U.S.C. § 2719(b).

5 **The Graton Rancheria Restoration Act of 2000**

6 53. On August 6, 1998, during the 105th Congress, Congresswoman Lynn Woolsey introduced
7 a bill numbered HR 4434, entitled the Graton Rancheria Restoration Act. If adopted, HR 4434 would
8 have restored recognition of the FIGR and made members eligible for all Federal services and benefits
9 available to members of Indian tribes. In addition, it would have mandated that upon application by
10 FIGR, the Secretary would have had to accept into trust for the tribe any Indian-owned property it
11 selected in Marin or Sonoma Counties.

12 54. On September 8, 1998, the Office of Tribal Services of the BIA issued a Memorandum to
13 the Office of Congressional and Legislative Affairs with comments on HR 4434. In the Memorandum,
14 the Office of Tribal Services stated that it "cannot recommend support of the bill" because of the lack of
15 evidence of any significant connection between the group requesting recognition and the terminated tribe.
16 The bill did not pass.

17 55. On March 2, 1999, during the 106th Congress, Congresswoman Woolsey reintroduced the
18 Graton Rancheria Restoration Act as HR 946. The bill was identical to HR 4434. On March 26, 1999,
19 the Office of Congressional and Legislative Affairs of the BIA issued a Memorandum on HR 946 to the
20 Office of Tribal Services. The Office of Congressional and Legislative Affairs attached the prior
21 Memorandum of September 8, 1998 on HR 4434 and quoted its conclusion that it "[could not]
22 recommend support of the bill at this time."

23 56. On May 16, 2000, a hearing was held in the House Resources Committee on HR 946. At
24 that hearing, the Chairman of FIGR, Greg Sarris, testified that the tribe was foregoing the right to conduct
25 gambling, and affirmed that the tribe "did not want to develop the land for casinos." The Committee
26 recommended passage of HR 946 and issued a Report. That Report made clear that Congress did not
27 intend that placement of property into trust would preempt State law. The Committee wrote: "This bill is
28 not intended to preempt any State, local, or tribal law." House Report 106-677, p. 3.

1 57. On May 25, 2000, Senator Barbara Boxer introduced a bill known as S. 2633 which was
 2 identical to HR 946. Like HR 946, S.2633 contained language which would have prohibited FIGR from
 3 conducting gambling on any land obtained. In October 26, 2000, just minutes before passage by the
 4 House of the Omnibus Indian Advancement Act of 2000 (HR 5528), and just two days after the bill was
 5 introduced, the Graton Act was amended into the bill. The Graton Act did not contain the restrictions on
 6 FIGR against gambling that had been in HR 946 and in S.2633 and before that in HR 4434. Congress
 7 passed the Omnibus bill without further hearings, and the President signed it into law in December 2000.
 8 The Act did not state that FIGR would be sovereign over newly acquired land, or attempt to pre-empt
 9 state law. To the contrary, as noted, the House Report on the bill stated that there was no intent to
 10 preempt State law.

11 58. Section 1405 of the Graton Act, codified at 25 U.S.C. § 1300n-3, directs that the Secretary
 12 shall take land into trust for the benefit of FIGR. However, this mandate is subject to qualification.

13 Subsection (a) provides:

14 Upon application by the Tribe, the Secretary shall accept into trust for the benefit of the
 15 Tribe any real property located in Marin or Sonoma County, California, for the benefit of
 16 the Tribe after the property is conveyed or otherwise transferred to the Secretary and if, at
 17 the time of such conveyance or transfer, *there are no adverse legal claims to such*
 18 *property*, including outstanding liens, mortgages, or taxes.

19 Subsection (b) provides in part:

20 [R]eal property eligible for trust status under this section *shall include* Indian owned fee
 21 land held by persons listed as distributees or dependent members in the distribution plan
 22 approved by the Secretary on September 17, 1959, or such distributees' or dependent
 23 members' Indian heirs or successors in interest.

24 *Id.* (emphasis added).

25 **FACTUAL BACKGROUND**

26 **Congress' Failure to Ratify Treaties with California Tribes**

27 59. In 1851, one year after the State of California had been admitted into the Union, President
 28 Fillmore appointed three Indian agents to negotiate treaties with Indian tribes in California. Between

1 March 19, 1851 and January 7, 1852, these agents negotiated 18 treaties with various tribal
2 representatives in California. FIGR did not exist at this time. The closest tribes with whom treaties were
3 negotiated were a tribe of Indians at Clear Lake (about 80 miles from Graton), and a tribe of Indians on
4 the Russian River near Hopland in Mendocino County (about 60 miles from Graton). In June 1852, the
5 treaties were submitted to the Senate for ratification, but in August 1852, after considerable debate,
6 Congress refused to ratify the treaties. Its failure to ratify the treaties reflected its political judgment not
7 to recognize the sovereignty of any of the tribes.

8 **The Rancheria System and the Graton Rancheria Site 1900-1958**

9 60. The rancheria system was unique to California and had been adopted in rejection of the
10 reservation system. Under the reservation system, Indians were segregated unto large tracts of land far
11 away from non-Indian settlements and lived largely outside of and away from the non-Indian community.
12 Due to their isolation, lack of resources and other reasons, the Indians on such reservations usually could
13 not be very productive and ended up in poverty and dependence. In 1905, pursuant to an Act of Congress
14 (33 Stats. 1058), the Secretary appointed a special agent, C.E. Kelsey, to investigate the existing
15 condition of the California Indians and to report to Congress some plan to improve them. Mr. Kelsey
16 found the condition of the Indians to be destitute and recommended creation of the rancheria system to
17 benefit individual Indians.

18 61. The rancherias were to be small tracts of land in the midst of farm communities where
19 parcels of a few acres could be assigned to individual families. These would not be large enough to
20 support the residents, but rather the Indian residents would work in the community. Since most state
21 lands were already settled, agent Kelsey noted that Congress would need to purchase settled lands. In
22 1906, Congress authorized the first monies for the program, and did so again in 1908, yearly between
23 1914 and 1929, and in 1937. Kelsey administered the purchase of such lands and the assignment to
24 Indian residents from 1906 through 1913.

25 62. Nothing in agent Kelsey's original report, or his subsequent purchase or administration of
26 the land, indicates any attempt by the federal government to oust the State of California from jurisdiction
27 over lands purchased for rancherias or any claim by the Federal government that state law no longer
28 applied to sites purchased. In fact, contemporaneous agency documents indicate that at first, neither the

1 rancherias nor the unaffiliated Indians that were assigned land on the rancherias, were considered to be
2 under the supervision of the Office of Indian Affairs.

3 63. In 1912, soon after the Rancheria system was established, the Office of Indian Affairs in
4 Washington, D.C. took the position that plots of land that had been purchased by the federal government
5 from private parties and that had been under the jurisdiction of the State of California remained under the
6 jurisdiction of the State.

7 **The Establishment and Operation of the Graton Rancheria**

8 64. In 1921, the Office of Indian Affairs of the Department of Interior purchased 15.45 acres
9 of land about three miles northwest of Sebastopol, which later became known as the Sebastopol
10 Rancheria or the Graton Rancheria (neither are Indian names--Sebastopol is Russian and Graton is
11 English). Title to the Graton Rancheria was not taken in trust. Rather, the government held fee title.
12 Purchase documents indicated the land was intended for the use of Indians from the Marshall and
13 Sebastopol area, but did not define them by any tribal name or indicate they were a tribe. According to
14 BIA documents, from 1921 to 1937, no one lived on the Graton Rancheria.

15 65. From 1937 to 1966, between three and five Indians lived on the Graton Rancheria with the
16 permission of the Office of Indian Affairs. The residents had varying connections to Indian heritage, and
17 were from various areas in the state, at least one being from as far away as Siskiyou. Some were
18 members of existing tribes. The residents of the rancheria never organized as a tribe.

19 **The Distribution of the Graton Rancheria Under the California Rancheria Act of 1958**

20 66. In or about 1956, the residents of the Graton Rancheria requested the Federal government
21 to distribute to them in fee the parcels on which they lived. In 1958, Congress passed a bill, known as the
22 California Rancheria Act, to authorize the Secretary of Interior to distribute rancheria lands to the
23 assignees who had developed the lands and lived on them. The Graton Rancheria was included in this
24 Act. A Senate Report on the bill provides details on each Rancheria, and under Graton Rancheria reads,
25 "The group is not organized either formally or informally." 85 Congress, 2nd Session, Senate Report No.
26 1874, p. 24. In other words, the residents of the Graton Rancheria had not formed any sort of self-
27 government, either under the Indian Reorganization Act of 1933 or otherwise, and had not exercised any
28 sort of sovereignty over the land. The California Rancheria Act was informally known as the termination

1 bill, because it included provisions terminating the status of distributees as dependents entitled to special
2 government benefits.

3 67. During hearings on the California Rancheria Act, Congress raised questions whether
4 rancheria lands were trust lands held in trust for a particular group. The Solicitor of the DOI assured
5 Congress in testimony that the lands were not trust lands and not held for particular groups, and that the
6 government held title which could be transferred to individuals. Thus, this was not the type of land on
7 which tribal Indians held sovereignty.

8 68. In 1960, after passage of the California Rancheria Act, when the BIA was preparing to
9 subdivide rancherias and distribute parcels to Indian residents, the issue about the Indian title to the land
10 arose again. Title companies were concerned that land was held in trust, and that the government could
11 not transfer good legal title to individual Indians as that would violate the obligation of the government to
12 future tribal members. The Department of Interior researched the conditions under which rancherias were
13 created and opined that there were no trust obligations to any tribal members. In August 1960, the
14 Solicitor of the DOI issued a formal opinion which opined that rancheria properties were not trust lands
15 and "belonged to the United States in law and equity." Opinions, 2 DOINA 1882.

16 69. Plaintiffs are not aware of any use of the Graton Rancheria which would indicate that
17 either the residents or the state considered this land to be outside the sovereign jurisdiction of the State of
18 California.

19 70. In 1965 and 1966, the Federal Government subdivided the land which had comprised the
20 Graton Rancheria and deeded out the parcels to the residents (or their families in the case of deceased
21 residents). These residents were given full fee title, and no consideration was charged for the transfer.
22 The grantees were free to hold the land or sell it.

23 **Establishment of the Federated Indians of Graton Rancheria**

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

1 place.

2 72. The Federated Coast Miwok changed their name to the Federated Indians of the Graton
3 Rancheria, and then sought Congressional “restoration” of recognition of the tribe under the theory that
4 Congress had terminated their recognition and that only Congress could restore it. This was fiction since
5 Congress had neither granted nor terminated federal recognition of the Federated Coast Miwok.

6 **FIGR’s March 2006 Fee to Trust Application for a Mandatory Acquisition**
7 **of Lands in Sonoma County**

8 73. In August of 2003, FIGR proposed a site for its reservation and projected gaming facility
9 at Stony Point Road, near the City of Rohnert Park in Sonoma County. FIGR’s proposal was met with
10 vigorous opposition from neighboring communities which objected to the construction of a gaming
11 casino due to the project’s negative off-reservation economic, environmental, health and safety effects.

12 74. These objections are documented in resolutions passed by the City Councils of
13 Healdsburg, Sebastopol and Windsor. Each of the resolutions voices concerns regarding the public’s
14 limited right to input on the proposed project and urges Congress to amend the Graton Act to include the
15 gaming prohibitions that existed in the original bill.

16 75. FIGR requested the NIGC to prepare an environmental impact statement for the approval
17 of a gaming management contract between FIGR and SC Sonoma Management LLC at the Stony Point
18 property (“Stony Point site”). The NIGC published its Notice of Intent to prepare an Environmental
19 Impact Statement on February 12, 2004. 69 Fed.Reg. 7022. In August of 2005, the NIGC issued its final
20 scoping report.

21 76. In October of 2003, FIGR entered into a Memorandum of Understanding with the City
22 Council of Rohnert Park, pursuant to which the tribe agreed to mitigate some, but not all, of the impacts
23 of the proposed gaming facility.

24 77. On October 7, 2003, attorneys for FIGR were informed by the Acting Regional Director of
25 the BIA that, pursuant to the determination of the Assistant Regional Solicitor, “a mandatory acquisition
26 can only occur if there are no adverse legal claims existing on the property subject to the fee to trust
27 application.” The letter explains that adverse legal claims, within the meaning of the Graton Act, may
28 include potential environmental liability. The Regional Director’s letter is attached hereto as Exhibit 1.

1 78. On November 1, 2004, the FIGR entered into a Memorandum of Understanding with
2 Sonoma County to mitigate some, but not all, of the off-reservation impacts of a casino at the Stony Point
3 Property. The agreement stipulated that FIGR intended to submit an application to the Secretary,
4 requesting that land be taken into trust as part of FIGR's "new reservation" for the purpose of a casino
5 and hotel.

6 79. On August 11, 2005, title to the lands east of the Stony Point property was transferred to
7 SC Sonoma Development LLC. SC Sonoma Development LLC is a subsidiary of Stations Casinos, Inc.

8 80. On August 12, 2005, and in response to the results of the final scoping report completed
9 by the NIGC, FIGR relocated the proposed casino to a site immediately east of the Stony Point location to
10 what is now known as the Wilfred site.

11 81. On September 29, 2005, the NIGC published a supplemental Notice of Intent with regard
12 to the management contract between the FIGR and SC Sonoma Management LLC. 70 Fed.Reg. 56,933.
13 The Notice provides that, "the proposed action is very similar to that proposed on February 12, 2004,
14 with the exception that the casino and hotel would be constructed adjacent to and on the east side of the
15 previously proposed site."

16 82. On March 24, 2006, FIGR submitted to BIA an application to acquire in trust a 254-acre
17 parcel of land located adjacent to the City of Rohnert Park ("the Property"), for the express purpose of
18 developing a gambling facility on the parcel that would otherwise be forbidden under California law.

19 83. Included with FIGR's application is FIGR's request, originally made on November 23,
20 2004, to the Regional Field Solicitor's Office of the BIA seeking confirmation that the Property would
21 qualify for gaming under the restored lands exception of Section 20 of IGRA, 25 U.S.C. §
22 2719(b)(1)(B)(iii). Also included with FIGR's application is FIGR's request, originally made on July 26,
23 2005, likewise seeking confirmation from the NIGC that the Property would qualify for gaming under the
24 restored lands exception of Section 20 of IGRA.

25 84. In a letter dated May 1, 2006, the Office of the Governor informed the NIGC that the
26 Property was *not* eligible for trust status under the Graton Act because it was not Indian owned fee land,
27 as required by 25 U.S.C. § 1300n-3(b), but instead land held by subsidiaries of Stations Casinos, Inc. The
28 Office of the Governor also advised the NIGC that "large portions of the proposed trust acquisition are

1 subject to land use restrictions set forth in the Williamson Act,” Cal. Govt. Code § 51200 et seq. This
2 letter is attached hereto as Exhibit 2.

3 85. The Williamson Act provides that individual landowners may enter into contracts with a
4 city or county that enforceably restrict use of the land. Cal. Govt. Code § 51200 et seq. Lands subject to
5 such contracts are included in an agricultural preserve and their use is restricted to recreation, open-space
6 and agriculture. These contracts are for a period of at least ten years, and are renewed automatically every
7 year unless the landowner submits an application for non-renewal or qualifies for cancellation of the
8 contract. The Williamson Act also gives owners of property located in the county or city in which the
9 agricultural preserve is situated, the right to protest the cancellation of any such contracts. Cal. Govt.
10 Code § 51285.

11 86. Upon information and belief, to date no applications have been filed for the non-renewal
12 or cancellation of the Williamson Act contracts involving lands within the Property.

13 87. By memorandum dated October 29, 2007, defendant Dale Morris, Pacific Regional
14 Director of BIA, transmitted to defendant Carl J. Artman, former Assistant Secretary of the Department
15 of the Interior for Indian Affairs, defendant Morris’ recommendation that the Property be accepted into
16 trust.

17 88. By letter dated April 18, 2008, defendant Artman advised FIGR that BIA had made a
18 “determination that the parcel will be taken into trust.” A true copy of defendant Artman’s April 18,
19 2008 letter is annexed as Exhibit 3 hereto.

20 89. On May 7, 2008, the Secretary published in the Federal Register notice of the Assistant
21 Secretary for Indian Affairs’ “final agency determination to acquire approximately 254 acres of land into
22 trust” for FIGR on April 18, 2008. 73 Fed.Reg. 25766. A true copy of the Secretary’s Federal Register
23 notice is annexed as Exhibit 4 hereto.

24 90. On July 22, 2008, FIGR and the County of Sonoma entered into a second Memorandum of
25 Agreement, whereby the parties agreed that no further lands would be taken into trust for FIGR pursuant
26 to the mandatory provisions of the Graton Act.

27 91. The Property is located just west of Rohnert Park, about 500 yards from Highway 101. It
28 includes 11 separate parcels, 10 of which are currently owned by SC Sonoma Development LLC and the

1 remaining one by Sonoma Land Holdings LLC. These owners obtained their rights and title from other
 2 private parties, as the Property has been in private hands since 1843. Continuously since the State of
 3 California was admitted to the Union, the Property has been governed under the laws of the State of
 4 California and never was under Indian sovereignty.

5 92. But for the transfer into trust here challenged, development of the site would be governed
 6 and limited by the General Plan of Sonoma County. Development of the proposed complex would be
 7 inconsistent with numerous provisions of the Sonoma County General Plan and, absent amendment of
 8 that Plan and its zoning regulations, would not be allowed. Water use would be governed by state law,
 9 and other aspects of the proposed development would be governed by state law. Further, casino gambling
 10 would not be allowed under the Penal Code of the State of California. Development of the Property in
 11 violation of the Sonoma County General Plan and zoning laws, and state water, land use and gambling
 12 laws, would harm the interests of plaintiffs.

13 93. The Secretary's Federal Register notice of May 7, 2008 states that it "is published to
 14 comply with the requirement of 25 C.F.R. Part 151.12(b) that notice be given to the public of the
 15 Secretary's decision to acquire land in trust at least 30 days prior to a signatory acceptance of the land
 16 into trust. The purpose of the 30-day waiting period in 25 C.F.R. section 151.12(b) is to afford interested
 17 parties the opportunity to seek judicial review of final administrative decisions to take land in trust for
 18 Indian tribes and individual Indians before transfer of title to the property occurs." A true copy of this
 19 notice is annexed as Exhibit 4 hereto; *see* page 1 thereof at column 3.

20 94. In accordance with the Secretary's notice, plaintiffs brought this action within its 30-day
 21 notice period to exercise their "opportunity to seek judicial review" of the Secretary's decision to take the
 22 property into trust for FIGR's use for Nevada-style gambling.

23 **FIRST CLAIM FOR RELIEF**

24 **(DECLARATORY RELIEF UNDER 5 U.S.C. §§ 701-706,**
 25 **28 U.S.C. § 2201 and 25 U.S.C. §1300n-1, et seq.)**

26 **(ALLEGED BY ALL PLAINTIFFS AGAINST ALL DEFENDANTS)**

27 95. The paragraphs set forth above are realleged and incorporated herein by reference.

28 96. An actual controversy exists between plaintiffs and defendants. Plaintiffs contend that the

1 state has exercised plenary jurisdiction over the Property and the surrounding area since its admission into
 2 the Union in 1850, and that the State of California would retain plenary jurisdiction over the Property
 3 even if the Secretary were to take title to the Property in trust for FIGR and the land became part of
 4 FIGR's reservation. In particular, plaintiffs contend that the Property would remain subject to California
 5 land use and water law, and penal law prohibitions against casino gambling.

6 97. Defendants contend that if the Secretary accepts title in trust for FIGR, and the Property
 7 becomes part of FIGR's reservation, the Property would no longer be subject to state jurisdiction, and that
 8 FIGR could construct a large casino on the Property without having to observe limits of California law
 9 and conduct casino gambling at the site despite California's prohibitions against those activities.

10 98. If the Property were taken into trust and FIGR were thereby exempted from state law on
 11 the Property, that would suddenly deprive plaintiffs of the protections of state law and disturb their long-
 12 standing and well-founded expectations.

13 99. For these reasons, plaintiffs seek a declaration that if the Secretary accepts title to the
 14 Property in trust for FIGR, the Property would remain under the plenary jurisdiction of the State of
 15 California and that state limits on land use and state prohibitions against casino gambling would continue
 16 to govern the Property.

17 **SECOND CLAIM FOR RELIEF**

18 **(INJUNCTIVE RELIEF UNDER 5 U.S.C. §§ 701-706, 25 U.S.C. §1300n-3(a)-(b))**

19 **(ALLEGED BY ALL PLAINTIFFS AGAINST ALL DEFENDANTS)**

20 100. The paragraphs set forth above are realleged and incorporated herein by reference.

21 101. Section 706(2) of the APA empowers the court to hold unlawful and set aside agency
 22 action found to be arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with
 23 the law.

24 102. The Graton Act imposes three substantive requirements on the Secretary with regard to the
 25 transfer of fee land into trust for the benefit of FIGR: (1) the land to be taken into trust must be located in
 26 Marin or Sonoma Counties (25 U.S.C. § 1300n-3(a)); (2) there may not be an adverse legal claim to such
 27 property at the time of conveyance (*id.*); and (3) to be eligible, lands taken into trust "shall include Indian
 28 owned fee land held by persons listed as distributees or dependent members in the distribution plan

1 approved by the Secretary on September 17, 1959, or such distributees' or dependent members' Indian
2 heirs or successors in interest" (*Id.* § 1300n-3 (b)).

3 103. An adverse legal claim to the Property existed at the time of conveyance. The Property, or
4 parts thereof, is subject to contracts under the Williamson Act, Cal. Govt. Code sections 51200 et seq.
5 The existence of such claims at the time of conveyance is a complete bar to the trust acquisition under the
6 Graton Act.

7 104. Second, the Property is held by subsidiaries of Stations Casinos, Inc., which is not an
8 Indian successor in interest to an Indian fee owner or distributee or dependent member in the distribution
9 plan approved in 1959, and thus ineligible for trust status. 25 U.S.C. § 1300n-3(b).

10 105. Therefore, the Secretary's action of taking land into trust under the authorization of the
11 Graton Act was arbitrary and capricious and otherwise not in accordance with the law.

12 106. Accordingly, this Court is vested with authority under 5 U.S.C. § 706(2) to set aside the
13 Secretary's unlawful approval of FIGR's trust application.

14 **THIRD CLAIM FOR RELIEF**

15 **(DECLARATORY and INJUNCTIVE RELIEF UNDER 5 U.S.C. §§ 701-706, 28 U.S.C. §§ 2201,**
16 **2202, and U.S. Const. art. I, § 8, cl. 3; art. IV, § 3; and amend. X)**

17 **(ALLEGED BY ALL PLAINTIFFS AGAINST ALL DEFENDANTS)**

18 107. The paragraphs set forth above are realleged and incorporated herein by reference.

19 108. The Graton Act provides that "upon application of the Tribe, the Secretary shall accept
20 into trust for the benefit of the Tribe any real property located in Marin and Sonoma County, California,"
21 25 U.S.C. § 1300n-3, and that lands so acquired are the "reservation" of the Tribe. 25 U.S.C. § 1300n-
22 1(6). To the extent that the Secretary's action taken pursuant to the Graton Act purports to divest the
23 State of California of jurisdiction over the Property or confers sovereignty on FIGR over the Property,
24 plaintiffs seek this Court's declaration that the Secretary's approval of FIGR's application is
25 unconstitutional.

26 109. The Constitution does not authorize the Federal Government to divest the states of their
27 jurisdiction over state lands that have been under continuous state control since admission into the Union
28 or to transfer jurisdiction over such lands to Indian tribes. First, such actions by the federal government

1 violate state sovereignty as protected by the Constitution under the Admissions Clause of the
 2 Constitution, which provides that “no new states shall be formed or erected within the jurisdiction of any
 3 other state . . . without the consent of the legislatures of the states,” and the Tenth Amendment, which
 4 reserves all powers not delegated to the federal government to the states. U.S. Const. art. IV, sec 3,
 5 amend X.

6 110. Furthermore, such action is not authorized by the Constitution. None of the recognized
 7 sources of federal authority over Indian affairs, including the Commerce Clause, the Property Clause, the
 8 Necessary and Proper Clause, and the Supremacy Clause, grant to the federal government the ability to
 9 usurp state jurisdiction over lands, such as the Property here, that have been under state control since state
 10 inception without state consent. U.S. Const. art. I, § 8, cl. 3; art. IV, § 3, cl. 2, art. I, § 8, cl. 18, art. VI, cl.
 11 2.

12 111. An actual controversy exists between the parties as to whether the Graton Act provides
 13 valid authority for the recognition of the Property as land that is subject to Indian jurisdiction and outside
 14 the jurisdiction of the State of California. Accordingly, this Court is vested with the power to determine
 15 the rights of the parties as to the existence of state regulatory protection with regard to the Property under
 16 28 U.S.C. § 2201.

17 112. Pursuant to 28 U.S.C. § 2202, plaintiffs are entitled to injunctive relief, enjoining and
 18 restraining the Secretary from taking land into trust for the benefit of FIGR because such acquisition is
 19 invalid as a matter of federal law and contrary to public policy. Unless so enjoined by this Court,
 20 plaintiffs will suffer imminent, permanent, and irreparable harm for which there is no adequate remedy at
 21 law.

22 **FOURTH CLAIM FOR RELIEF**

23 **(DECLARATORY RELIEF UNDER 5 U.S.C. §§ 701-706,** 24 **25 U.S.C. §§ 2703, 2710 2719, 28 U.S.C. § 2201)**

25 **(ALLEGED BY ALL PLAINTIFFS AGAINST ALL DEFENDANTS)**

26 113. The paragraphs set forth above are realleged and incorporated herein by reference.

27 114. An actual controversy exists between plaintiffs and defendants with regard to the legal
 28 effect of the Secretary’s action taking land into trust for FIGR. Specifically, plaintiffs allege that such

1 action does not qualify the Property for gaming under sections 4, 11 and 20 of the Indian Gaming
2 Regulatory Act, 25 U.S.C. §§ 2703, 2710 and 2719. Plaintiffs maintain that FIGR does not have
3 jurisdiction over the Property as is required by IGRA. Defendants have purported to take this land into
4 trust for the purpose of facilitating the construction of a gambling casino to be managed jointly by FIGR
5 and Stations Casinos, Inc. Such use is authorized only where a tribe holds governmental authority over
6 the lands to be used for gaming; here FIGR does not have such authority.

7 115. Accordingly, this Court is vested with authority, pursuant to 28 U.S.C. § 2201(a), to
8 declare the rights and other legal relations of plaintiffs and defendants with respect to the legal status of
9 the Property, and to further declare that such land is not eligible for gaming activities as authorized by
10 IGRA, 25 U.S.C. §§ 2703, 2710 and 2719.

11 **RELIEF REQUESTED**

12 WHEREFORE, plaintiffs pray for judgment against the defendants as follows:

13 1. For declaratory judgment that the Graton Act does not authorize the Secretary to divest the
14 State of California of jurisdiction over the Property, nor grant FIGR sovereignty over the Property;

15 2. For temporary, preliminary and permanent injunctive relief through an order enjoining the
16 Federal Defendants from taking the Property into trust for the benefit of FIGR in violation of the Graton
17 Act;

18 3. If the Court finds that the Graton Act does authorize the Secretary to divest the State of
19 California of jurisdiction, for a further declaration that the Graton Act is unconstitutional on the grounds
20 alleged in this Complaint;

21 4. For a further declaration that the Property is ineligible for gaming under IGRA because the
22 State retains regulatory jurisdiction over the Property;

23 5. For an order awarding plaintiffs their costs of litigation, including attorney's fees, pursuant
24 to the Equal Access to Justice Act, 28 U.S.C. § 2412 or as otherwise provided by law; and

25 ///

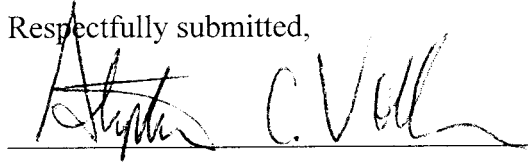
26 ///

27 ///

1 6. For such other relief as the Court may deem necessary and appropriate.

2 Dated: January 9, 2009

3 Respectfully submitted,

4 

5 STEPHAN C. VOLKER

6 Attorneys for Plaintiffs STOP THE CASINO 101
7 COALITION, ROBERT AHERNE, AMY BOYD, LISA
8 CATELANI, FRANK EGGER, MICHAEL ERICKSON,
9 MICHAEL HEALY, LINDA LONG, LISA McELROY,
10 PAM MILLER, MARILEE MONTGOMERY, FRED
11 SOARES, JAMIE WALLACE, CHIP WORTHINGTON
12 and LINDA WORTHINGTON
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