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CLERK, U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

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12 UNITED STATES DISTRICT COURT  
13 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

14 '08 CV 1793 DMS POR

CASE NO.

15 JAMUL INDIAN VILLAGE,  
16 Plaintiff,

v.

17 COMPLAINT FOR DECLARATORY  
18 AND INJUNCTIVE RELIEF

Judge:

17 WILL KEMPTON, Director of the  
18 California Dept. of Transportation, PEDRO  
19 ORSO- DELGADO, District 11 Director,  
20 California Dept. of Transportation, JOHN  
21 MARKEY, District 11 Permit Manager,  
California Department of Transportation,  
Defendants.

22 Plaintiff Jamul Indian Village (the "Tribe" or "Jamul"), by and through its counsel,  
23 states and alleges as follows:

24 INTRODUCTION

25 1. The Tribe brings this action for declaratory and injunctive relief in response  
26 to the Defendants' violations of federal law and their unlawful interference with the Jamul  
27 Indian Village's federally sanctioned activities on its Reservation. The Defendants' repeated  
28 attempts to apply and enforce state land use and environmental laws on the Tribe's on-

*CR*

1 Reservation activities and the Defendants' decision to restrict access to the Reservation are  
2 impermissible, invalid, and patently unlawful. The Jamul Tribe seeks declaratory relief from  
3 this Court with respect to Defendants' attempts to assert state jurisdiction over the Tribe's  
4 Reservation and restrict its access to the Reservation. The Tribe also seeks injunctive relief  
5 against the Defendants pursuant to Fed. R. Civ. P. 65; unless the Defendants are enjoined, the  
6 Tribe will suffer irreparable harm.

7 **JURISDICTION AND VENUE**

8 2. The District Court has jurisdiction over this action pursuant to 28 U.S.C.  
9 § 1331, conferring jurisdiction on this Court for all civil actions arising under the Constitution,  
10 laws, or treaties of the United States, and under 28 U.S.C. § 1362, conferring jurisdiction on  
11 this Court for all civil actions brought by any Indian tribe or band with a governing body duly  
12 recognized by the Secretary of the Interior wherein the matter arises under the Constitution,  
13 laws, or treaties of the United States.

14 3. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and (c)  
15 because one or more of the Defendants reside in this District, a substantial part of the events or  
16 omissions giving rise to the claims occurred in this District, and/or a substantial part of the  
17 property that is the subject of the action is situated in this District.

18 **PARTIES**

19 4. Jamul is a federally recognized Indian tribe organized under the Indian  
20 Reorganization Act of 1934, 25 U.S.C. §§ 461 *et seq.* ("the IRA"). The Tribe is situated on  
21 land taken into trust by the Secretary of the Interior ("Secretary") pursuant to the IRA and held  
22 by the United States for the benefit of the Tribe.

23 5. Defendant Will Kempton is the Director of the California Department of  
24 Transportation ("Caltrans"), the state agency that manages California's highway and freeway  
25 system, inter-city rail services, public-use airports, and special-use hospital heliports.  
26 Kempton is responsible for managing the day-to-day operations of the agency. He is sued in  
27 his official capacity.

28

1           6. Defendant Pedro Orso-Delgado is the Director of Caltrans' District 11, a  
2 geographic area that includes San Diego County. Upon information and belief, Defendant  
3 Orso-Delgado's duties include the day-to-day administration of Caltrans' programs within the  
4 District. He is sued in his official capacity.

5           7. Defendant John Markey is the District Permit Manager for District 11 of the  
6 California Department of Transportation. Upon information and belief, Defendant Markey's  
7 duties include administration of District 11's permitting program. He is sued in his official  
8 capacity.

9                           **ALLEGATIONS COMMON TO ALL CLAIMS FOR RELIEF**

10           **The Tribe And Its Land**

11           8. The Jamul Reservation (the "Reservation") is located within the Tribe's  
12 recognized and documented ancestral lands. Tribal members have lived on the site of the  
13 Reservation for more than a century, working at nearby ranches and living, until the 1970s,  
14 largely without modern amenities.

15           9. The Reservation consists of approximately six acres of land made up of two  
16 parcels. A 4.55-acre parcel of land was conveyed to the United States by Donald and  
17 Lawrence Daley on December 12, 1978, and was taken into trust by the Secretary for the  
18 Jamul Indians on December 21, 1978. A 1.37-acre parcel of land was conveyed to the United  
19 States by the Roman Catholic Bishop of San Diego on May 25, 1982, and was taken into trust  
20 by the Secretary for the Jamul Indians on July 2, 1982.

21           10. The Tribe has adopted a Constitution, approved by the Secretary under the  
22 IRA, and is governed by a five-member Executive Committee.

23           11. The Tribe exercises sovereign authority and governmental jurisdiction over  
24 the Reservation. The Executive Committee has duly enacted ordinances, resolutions, and laws  
25 that govern land use and environmental matters on the Reservation.

26           12. The Reservation is abutted on its northeasterly side by California State  
27 Route 94 ("State Route 94"), which connects Interstate 5 in San Diego to Interstate 8 in  
28

1 Manzanita.

2 13. State Route 94 is part of the National Highway System established by the  
3 Federal-Aid Highway Act, 23 U.S.C. §§ 101 *et seq.* ("Highway Act"), according to the  
4 Federal Highway Administration.

5 14. The portion of the Reservation that abuts State Route 94 is approximately  
6 60.93 feet wide. A 26-foot wide, paved driveway connects the Reservation to State Route 94  
7 and provides access to State Route 94. *See* Exhibit 1 (Reservation Map). This driveway,  
8 located within the Reservation trust lands, shall hereafter be referred to as the "Reservation  
9 Driveway".

10 15. Years before the Reservation was taken into trust by the United States, the  
11 title holders to the land that now constitutes the Reservation had granted an easement for a  
12 public highway to San Diego County in the approximate location of the present-day State  
13 Route 94. Under the terms of the grant, made in 1913, the benefits to the grantor were "the  
14 location and establishment of said main public highway above described and the erection of  
15 road fences hereinafter mentioned."

16 16. The Reservation Driveway existed before the then-County highway  
17 (predecessor to State Route 94) was transferred to the State of California in 1931 through  
18 Caltrans' Land Survey 430. Land Survey 430 shows access from a Catholic cemetery, located  
19 on the west side of the Reservation, to the then-County highway, which became State Route  
20 94, via the Reservation Driveway.

21 17. When the Secretary accepted the Reservation into trust for the benefit of the  
22 Tribe, the Secretary placed no limits upon use of the Reservation or access to the Reservation.  
23 In fact, as part of the transfer of property from the Roman Catholic Bishop of San Diego, an  
24 easement was granted to allow the Church ingress and egress to the cemetery on the west side  
25 of the Reservation using the existing Reservation Driveway "or over any road that  
26 subsequently is built to replace the existing one."

27 18. The access from the Reservation to State Route 94 via the Reservation  
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1 Driveway predates the establishment of Caltrans' program requiring encroachment permits for  
2 work in the state highway right-of-way.

3 19. The Tribe also has a paved road with a historic curb cut and access to State  
4 Route 94 located on a tribally owned parcel of fee land north of the Reservation. The paved  
5 road connects the Reservation to State Route 94, running from State Route 94 south to and  
6 onto the Reservation. This road will be referred to hereafter as the "North Driveway".

7 20. The North Driveway is located on a tribally granted right of way and has  
8 been accepted into and made a part of the federal Indian Reservation Roads ("IRR")  
9 inventory. Indian Reservation Roads are by federal statute public roads located within or  
10 providing access to an Indian reservation or Indian trust land. *See, e.g.*, 23 U.S.C. § 101(12).  
11 Indian Reservation Roads must remain open and available for public use. *See* 25 C.F.R.  
12 § 170.120.

13 21. The North Driveway is designated as Bureau of Indian Affairs ("BIA")  
14 Route No. SD08. As a BIA Route on the IRR system, the North Driveway is neither  
15 constructed nor maintained as part of a municipal, County, or State road system. Rather, the  
16 Tribe is the "public authority" with jurisdiction over the North Driveway. *See* 25 C.F.R.  
17 § 170.120, subd. (a).

### 18 **The Tribal-Federal Relationship**

19 22. The Tribe was formally recognized as a sovereign Indian tribe by the  
20 United States on May 9, 1981. Federal recognition is an acknowledgement of the sovereign  
21 status of the Tribe, its right to self-governance, and its government-to-government relationship  
22 with the United States. *See, e.g.*, 47 Fed. Reg. 53130-03 (Nov. 24, 1982) (list of federally  
23 recognized tribes).

24 23. As a matter of federal law, the activities of tribes such as Jamul conducted  
25 on land held in trust by the United States for the benefit of the tribe are outside the scope of  
26 state civil and regulatory laws, including state land use and environmental laws.

27 24. A tribe's exclusive and plenary power over its trust lands is subject only to  
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1 limits imposed by Congress. Jurisdictional limits such as that imposed by Public Law 83-280,  
2 25 U.S.C. § 1360 ("Public Law 280"), which extend the criminal prohibitory jurisdiction of  
3 certain states to certain areas of Indian country, do not extend to state regulatory laws.

4 25. Jamul's status as a federally recognized tribe also makes it eligible to  
5 engage in gaming under the Indian Gaming Regulatory Act, 25 U.S.C. §§ 2701 *et seq.*  
6 ("IGRA"). IGRA was enacted to declare the establishment of independent federal regulatory  
7 authority for gaming on Indian lands and to protect such gaming as a means of generating  
8 tribal revenue. 25 U.S.C. § 2702.

9 26. In Section 2710(a)(2), IGRA provides that "Class II" gaming on Indian  
10 lands is within the exclusive jurisdiction of Indian tribes. Thus, Congress has left no room for  
11 state regulation of Class II gaming.

12 27. The Department of the Interior determined on July 21, 2003, that the Tribe  
13 is eligible to conduct Class II gaming on its Reservation because the Reservation is "Indian  
14 lands" for purposes of IGRA.

#### 15 **The Tribe's Development of its Reservation**

16 28. The Tribe first announced plans in April 2000 to develop a large hotel and  
17 casino on the Reservation offering Class III gaming under IGRA. Over the next seven years,  
18 the Tribe worked diligently on such plans, asking the United States accept additional land into  
19 trust on behalf of the Tribe. Due to opposition from the Governor on the fee-to-trust transfer  
20 and development of Class III gaming, however, the Tribe eventually concluded that it should  
21 proceed with alternative development plans.

22 29. In March 2007, the Tribe announced that it had revised its plans and would  
23 develop a smaller-scale casino on the Reservation offering Class II gaming under IGRA.  
24 IGRA prohibits state regulation of Class II gaming. 25 U.S.C. §§ 2710(a)(2); 2702.

25 30. Over the past several years, Tribal representatives have voluntarily made  
26 various information and documents available to Caltrans, including traffic data such as  
27 estimated traffic volumes, project trip generation, updated traffic count, trip distribution and  
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1 assignment, peak and nonpeak flows, road segment Level of Service analyses, proposed  
2 improvements, impact analysis, analysis of alternatives for entrance design, and environmental  
3 analysis of traffic effects of the proposed access alternatives.

4 31. The Tribe prepared and submitted an Encroachment Permit Application for  
5 construction within the state highway right of way for water main improvements and a second  
6 application for highway access improvements.

7 32. The Tribe's representatives also have met numerous times in person and by  
8 telephone to discuss the Tribe's project with the Defendants and other representatives of  
9 Caltrans. In addition, the Tribe's representatives have – although not required by law but in an  
10 effort to cooperate with Defendants – orally shared with Defendants confidential, proprietary  
11 project development information.

#### 12 **The Defendants' Conduct**

13 33. On February 28, 2008, Tribal representatives met with Caltrans  
14 representatives to discuss the Tribe's casino development plans.

15 34. On March 4, 2008, Caltrans District 11 project manager Mark Bobotis sent  
16 a letter to the Tribe demanding that the Tribe submit an application for a State encroachment  
17 permit and initiate environmental review under the California Environmental Quality Act  
18 ("CEQA"), and stating that if the Tribe failed to do so, "Caltrans will take appropriate action  
19 regarding the [Reservation] access" to State Route 94.

20 35. On April 21, 2008, Defendant Markey sent a letter to the Tribe again  
21 stating that the the "Tribe needs to provide appropriate environmental documentation along  
22 with adequate mitigation, as needed, prior to work on improvements to support a substantial  
23 land use change", requiring the Tribe to submit final CEQA documents reviewing that land  
24 use change, and advising the Tribe that its application for an encroachment permit for water  
25 main improvements "will not be considered complete until receipt of all of the requested  
26 information. If this information is not received before May 30, 2008, your application will be  
27 denied without prejudice."  
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1           36.       On May 8, 2008, the Tribe sent a letter to Defendant Markey explaining  
2 that Caltrans and the Defendants lack authority to impose State land use and environmental  
3 laws and regulations on the Tribe's activities on the Reservation. The letter further explained  
4 that the water main improvements were in compliance with and in furtherance of objectives  
5 sanctioned and governed by federal law and policy. The Tribe offered to meet again with the  
6 Defendants to discuss their concerns.

7           37.       On information and belief, permits for installation and adjustment of Otay  
8 Water District lines, a water service system of which the Tribe's water main is a part, are  
9 issued as a matter of course for other permit applicants. The Defendants, however, appear to  
10 have singled out the Tribe's permit application as a means to control the Tribe's use of its  
11 Reservation.

12           38.       In response to the Tribe's letter, Defendant Orso-Delgado sent a letter to the  
13 Tribe, dated June 13, 2008, demanding that the Tribe produce its plans detailing construction  
14 on the Reservation, stating that the Defendants "must review and assess all proposed  
15 development impacts and mitigation on State facilities", and insisting that the Tribe must  
16 initiate the CEQA environmental review process.

17           39.       In his June 13, 2008 letter, Defendant Orso-Delgado further warned the  
18 Tribe that it may take various steps which would interfere with the Tribe's casino  
19 development, including "limiting/preventing access to the project site. Without following the  
20 CEQA process for improvements within the State right of way to improve access to the casino  
21 at SR-94, we will not allow use of the existing driveway for casino operations." Defendant  
22 Orso Delgado has verbally expanded this requirement of the Tribe to require that the  
23 Tribe conduct CEQA analysis on "any land use change on the Reservation." In a June 21,  
24 2008, letter to Tribe's attorney, Defendant Orso-Delgado further indicated that, prior to  
25 Caltrans' processing of an encroachment permit for water line improvements in the Caltrans  
26 right of way, "the [land use] project as a whole must be analyzed and submitted in an  
27 encroachment permit application." By advising that it will be "[l]ooking at the entire project  
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1 at once," Caltrans is attempting to expand its authority well beyond the State right of way and  
2 onto the federal lands of the Reservation.

3 40. In response to the June 13 letter, the Tribe's representative conferred with  
4 Defendant Orso-Delgado by telephone on August 22, 2008, to address and resolve the  
5 positions taken and issues raised in the Defendants' June 13 letter. Specifically, the Tribe  
6 informed the Defendants the positions taken in their June 13 letter were contrary to state and  
7 federal law.

8 41. On August 26, 2008, the Tribe sent Caltrans a letter asking the Defendants  
9 to retract their position and confirm that they would not obstruct the Tribe's access to its  
10 Reservation through the Reservation Driveway. The Defendants failed to retract their  
11 position.

12 42. The Tribe learned in September that the North Driveway had been added to  
13 the Indian Reservation Roads system and was now a BIA road, BIA Route No. SD08, and was  
14 part of the Federal lands highway system.

15 43. In a letter dated September 12, 2008, the Tribe's representatives informed  
16 Defendant Orso-Delgado of the IRR status of the North Driveway, noting that the access road  
17 was exempt from local permit requirements and eligible for federal funds for the construction,  
18 design, and maintenance of the road.

19 44. The Tribe requested in the September 12, 2008, letter that Defendant Orso-  
20 Delgado acknowledge that the Defendants do not have the authority to block the use of either  
21 the Reservation Driveway or the North Driveway and retract the Defendants' previously stated  
22 position that the Defendants intend to block access to the Reservation.

23 45. The Defendants failed to respond to the Tribe's September 12, 2008, letter,  
24 and failed to retract their position.

25 46. The Defendants' decision to limit or restrict ingress and egress to the  
26 Reservation by denying the Tribe access to its Reservation has injured the Tribe. Specifically,  
27 Defendants' conduct : (1) impedes the Tribe's sovereign authority to regulate on-Reservation  
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1 activities; (2) obstructs the Tribe's authority to regulate development on its Reservation under  
2 its own land use and environmental regulations; and (3) prevents the Tribe's from obtaining  
3 financing, equipment leases, and other necessary business commitments from lenders,  
4 suppliers, and other vendors in connection with its casino project.

5 47. Defendants' conduct also is contrary to that of other state agencies, which  
6 have recognized that the state lacks jurisdiction to regulate the Tribe's activities on the  
7 Reservation.

8 **COUNT I**

9 **(Declaratory and Injunctive Relief Against All Defendants In Their Official Capacities)**

10 **(18 U.S.C. § 1151)**

11 48. The Tribe restates and incorporates the allegations set forth in Paragraphs 1  
12 through 47 by reference herein.

13 49. The Reservation was set aside by the United States for the use of the Tribe,  
14 is subject to federal superintendence, and constitutes "Indian country" pursuant to 18 U.S.C.  
15 § 1151.

16 50. Defendants' attempt to apply and enforce state land use and environmental  
17 laws against the Tribe and on tribal activities within Indian country is precluded as a matter of  
18 federal law absent an unmistakably clear authorization by Congress, which does not exist with  
19 respect to the Reservation.

20 51. Defendants have no authority under federal law to impose state land use  
21 and environmental laws on the Reservation and on the Tribe's activities on the Reservation.

22 52. The foregoing controversy between the Tribe and the Defendants presents a  
23 substantial and disputed question of federal law that cannot be resolved without a judicial  
24 determination.

25 53. The Tribe is entitled to a declaration pursuant to 28 U.S.C. § 2201 that the  
26 Reservation is "Indian country" within the meaning of 18 U.S.C. § 1151, and that state civil  
27 regulatory law has no application upon such land.

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1 54. The Tribe further is entitled to an injunction pursuant to Fed. R. Civ. P. 65  
2 enjoining and restraining Defendants and any other person or entity acting on their behalf from  
3 applying or enforcing state land use and environmental laws on the Tribe and the Tribe's  
4 activities on the Reservation and from limiting or restricting highway access to the  
5 Reservation.

6 55. Unless so enjoined by this Court, the Tribe will suffer imminent,  
7 permanent, and irreparable harm for which there is no adequate remedy at law.

8 **COUNT II**

9 **(Declaratory and Injunctive Relief Against All Defendants In Their Official Capacities)**

10 **(Public Law 280)**

11 56. The Tribe restates and incorporates the allegations as set forth in  
12 Paragraphs 1 through 55 by reference herein.

13 57. The Reservation was accepted into trust by the United States for the use of  
14 the Tribe, is subject to federal superintendence, and constitutes "Indian country" pursuant to  
15 18 U.S.C. § 1151 and 25 U.S.C. § 1360.

16 58. Defendants' attempt to apply and enforce state land use and environmental  
17 laws to the Tribe and on tribal activities within Indian country is precluded as a matter of  
18 federal law and exceeds the scope of the state's jurisdiction under Public Law 280.

19 59. Defendants have no authority under Public Law 280 to impose state land  
20 use and environmental laws on the Reservation and on the Tribe's activities on the  
21 Reservation.

22 60. The foregoing controversy between the Tribe and the Defendants presents a  
23 substantial and disputed question of federal law that cannot be resolved without a judicial  
24 determination.

25 61. The Tribe is entitled to a declaration pursuant to 28 U.S.C. § 2201 that the  
26 Defendants' conduct exceeds the scope of state jurisdiction under Public Law 280.

27 62. The Tribe further is entitled to an injunction pursuant to Fed. R. Civ. P. 65  
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1 enjoining and restraining Defendants and any other person or entity acting on their behalf from  
2 applying or enforcing state land use and environmental laws on the Tribe and the Tribe's  
3 activities on the Reservation and from limiting or restricting highway access to the  
4 Reservation.

5 63. Unless so enjoined by this Court, the Tribe will suffer imminent,  
6 permanent, and irreparable harm for which there is no adequate remedy at law.

7 **COUNT III**

8 **(Declaratory and Injunctive Relief Against All Defendants In Their Official Capacities)**

9 **(Federal Preemption)**

10 **(U.S. Const., Art. VI, Cl. 2 and 25 U.S.C. §§ 2701 *et seq.*)**

11 64. The Tribe restates and incorporates the allegations as set forth in  
12 Paragraphs 1 through 63 by reference herein.

13 65. The Supremacy Clause of the Constitution, Article VI, Clause 2, provides  
14 that "the Constitution and the laws of the United States ... shall be the supreme law of the land  
15 ... anything in the constitutions or laws of any State to the contrary notwithstanding."

16 66. Congress enacted IGRA to comprehensively regulate the conduct of Indian  
17 gaming on tribal land in the United States. IGRA expressly states that state regulation of  
18 Class II gaming is prohibited, and IGRA and its implementing regulations constitute a  
19 regulatory framework that impliedly occupies the field in which the Defendants attempt to act  
20 and leaves no room for state regulation. *See* 25 U.S.C. §§ 2701; 2702; 2710; 25 C.F.R. Part  
21 501-577.

22 67. Defendants' attempt to apply and enforce state land use and environmental  
23 laws to the Tribe and on tribal activities on the Reservation and the Defendants' decision to  
24 limit or restrict highway access to the Reservation constitute regulation of the conduct of Class  
25 II gaming on the Reservation.

26 68. Defendants' regulation of Class II gaming on the Reservation is expressly  
27 preempted by IGRA.

28

1 69. Defendants' conduct has irreparably harmed and interfered with the Tribe's  
2 exercise of its rights under IGRA to offer Class II gaming free of State regulation.

3 70. The foregoing controversy between the Tribe and the Defendants presents a  
4 substantial and disputed question of federal law that cannot be resolved without a judicial  
5 determination.

6 71. The Tribe is entitled to a declaration pursuant to 28 U.S.C. § 2201 that the  
7 Defendants' conduct is preempted by IGRA.

8 72. The Tribe further is entitled to an injunction pursuant to Fed. R. Civ. P. 65  
9 enjoining and restraining Defendants and any other person or entity acting on their behalf from  
10 applying or enforcing state land use and environmental laws on the Tribe and the Tribe's  
11 activities on the Reservation and from limiting or restricting highway access to the  
12 Reservation.

13 73. Unless so enjoined by this Court, the Tribe will suffer imminent,  
14 permanent, and irreparable harm for which there is no adequate remedy at law.

15 **COUNT IV**

16 **(Declaratory and Injunctive Relief Against All Defendants In Their Official Capacities)**

17 **(Federal Preemption)**

18 **(U.S. Const., Art. VI, Cl. 2 and 23 U.S.C. § 204)**

19 74. The Tribe restates and incorporates the allegations as set forth in  
20 Paragraphs 1 through 73 by reference herein.

21 75. The Supremacy Clause of the Constitution, Article VI, Clause 2, provides  
22 that "the Constitution and the laws of the United States ... shall be the supreme law of the land  
23 ... anything in the constitutions or laws of any State to the contrary notwithstanding."

24 76. The North Driveway has been accepted into and made a part of the federal  
25 IRR inventory. 23 U.S.C. § 204(a)(1). As such, it is outside of state jurisdiction and is subject  
26 exclusively to federal rules for construction, permitting and other similar activities. 23 U.S.C.  
27 § 204(a)(6). Federal law requires that any road that is part of the federal lands highway  
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1 program remain open to the public. 23 U.S.C. § 204(a)(1). The only entity with jurisdiction  
2 to close an IRR road or to otherwise restrict access is “the public authority having jurisdiction  
3 over [the road].” 23 U.S.C. § 204(a)(1); 25 C.F.R. § 170.120. The Tribe is the public  
4 authority with respect to the North Driveway.

5 77. Defendants’ conduct in threatening to restrict access to the North Driveway  
6 has irreparably harmed and interfered with the Tribe’s exercise of its rights under the IRR to  
7 act as the public authority with respect to the North Driveway.

8 78. The foregoing controversy between the Tribe and the Defendants presents a  
9 substantial and disputed question of federal law that cannot be resolved without a judicial  
10 determination.

11 79. The Tribe is entitled to a declaration pursuant to 28 U.S.C. § 2201 that the  
12 Defendants’ conduct is preempted by the IRR.

13 80. The Tribe further is entitled to an injunction pursuant to Fed. R. Civ. P. 65  
14 enjoining and restraining Defendants and any other person or entity acting on their behalf from  
15 limiting or restricting access to the Reservation via the North Driveway.

16 81. Unless so enjoined by this Court, the Tribe will suffer imminent,  
17 permanent, and irreparable harm for which there is no adequate remedy at law.

18 **COUNT V**

19 **(Declaratory and Injunctive Relief Against All Defendants In Their Official Capacities)**

20 **(25 U.S.C. §§ 2701 et seq.)**

21 82. The Tribe restates and incorporates the allegations as set forth in  
22 Paragraphs 1 through 81 by reference herein.

23 83. Defendants’ attempt to apply and enforce State land use and environmental  
24 laws to the Tribe and on tribal activities on the Reservation and the Defendants’ decision to  
25 limit or restrict highway access to the Reservation constitute regulation and/or *de facto*  
26 prohibition of the scope and conduct of Class II gaming on the Reservation.

27 84. Defendants’ regulation and/or *de facto* prohibition of Class II gaming on  
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the Reservation is expressly prohibited by and violates IGRA.

85. Defendants' conduct has irreparably harmed and interfered with the Tribe's exercise of its rights under IGRA to offer Class II gaming free of State regulation.

86. The foregoing controversy between the Tribe and the Defendants presents a substantial and disputed question of federal law that cannot be resolved without a judicial determination.

87. The Tribe is entitled to a declaration pursuant to 28 U.S.C. § 2201 that the Defendants' conduct violates IGRA.

88. The Tribe further is entitled to an injunction pursuant to Fed. R. Civ. P. 65 enjoining and restraining Defendants and any other person or entity acting on their behalf from applying or enforcing state land use and environmental laws on the Tribe and the Tribe's activities on the Reservation and from limiting or restricting highway access to the Reservation.

89. Unless so enjoined by this Court, the Tribe will suffer imminent, permanent, and irreparable harm for which there is no adequate remedy at law.

**COUNT VI**

**(Declaratory and Injunctive Relief Against All Defendants In Their Official Capacities)**

**(Indian Commerce Clause)**

**(U.S. Const., Art. I, Sec. 8, Cl. 3)**

90. The Tribe restates and incorporates the allegations as set forth in Paragraphs 1 through 89 by reference herein.

91. The Tribe is a federally recognized Indian tribe, possessed of the federally recognized right of self-governance, and enjoys a government-to-government relationship with the United States of America.

92. The Constitution, Article I, Section 8, Clause 3, gives Congress the sole authority to regulate commerce with the Indian tribes.

93. Defendants' attempt to restrict and limit highway access to the Reservation

1 impermissibly interferes with commerce with the Indian tribes and supplants federal authority  
2 under the Indian Commerce Clause of the United States Constitution.

3 94. Defendants' conduct described herein has harmed and interfered with the  
4 Tribe's right to conduct commerce free of state regulation, harmed the Tribe's ability to  
5 engage in commerce, and injured the Tribe's sovereign right to manage Reservation affairs.

6 95. The foregoing controversy between the Tribe and the Defendants presents a  
7 substantial and disputed question of federal law that cannot be resolved without a judicial  
8 determination.

9 96. The Tribe is entitled to a declaration pursuant to 28 U.S.C. § 2201 that the  
10 Defendants' conduct violates Article I, Section 8, Clause 3 of the Constitution.

11 97. The Tribe further is entitled to a preliminary and permanent injunction  
12 pursuant to Fed. R. Civ. P. 65 enjoining and restraining Defendants and any other person or  
13 entity acting on their behalf from limiting or restricting highway access to the Reservation.

14 98. Unless so enjoined by this Court, the Tribe will suffer imminent,  
15 permanent, and irreparable harm for which there is no adequate remedy at law.

16 **COUNT VII**

17 **(Declaratory and Injunctive Relief Against All Defendants In Their Official Capacities)**

18 **(Nonintercourse Act)**

19 **(25 U.S.C. § 177)**

20 99. The Tribe restates and incorporates the allegations as set forth in  
21 Paragraphs 1 through 98 by reference herein.

22 100. Congress has prohibited the states from attempting, either directly or  
23 indirectly, to obtain title to Indian lands or make claims to Indian lands without federal  
24 authority. *See* 25 U.S.C. § 177.

25 101. The Defendants' conduct described herein so diminishes the Tribe's use of  
26 its Reservation that it constitutes an unlawful extinguishment of the Tribe's beneficial title to  
27 the land. As a consequence of the Defendants' conduct, the Tribe cannot access its land,  
28



1 cannot put its land to the Tribe's desired and intended use, and cannot put the land to its  
2 highest and best use.

3 102. The Defendants' conduct constitutes a violation of the prohibitions of the  
4 Nonintercourse Act.

5 103. The foregoing controversy between the Tribe and the Defendants presents a  
6 substantial and disputed question of federal law that cannot be resolved without a judicial  
7 determination.

8 104. The Tribe is entitled to a declaration pursuant to 28 U.S.C. § 2201 that the  
9 Defendants' conduct violates 25 U.S.C. § 177.

10 105. The Tribe further is entitled to a preliminary and permanent injunction  
11 pursuant to Fed. R. Civ. P. 65 enjoining and restraining Defendants and any other person or  
12 entity acting on their behalf from limiting or restricting highway access to the Reservation.

13 106. Unless so enjoined by this Court, the Tribe will suffer imminent,  
14 permanent, and irreparable harm for which there is no adequate remedy at law.

15 **COUNT VIII**

16 **(Interference with Tribal Self-Determination and Sovereignty)**

17 107. The Tribe restates and incorporates the allegations as set forth in  
18 Paragraphs 1 through 106 by reference herein.

19 108. The Tribe exercises jurisdiction and governmental power over its  
20 Reservation and tribal activities thereon. The Tribe's sovereignty and right to self-  
21 determination and self-governance are recognized and protected by federal common law.

22 109. Permitting the Defendants' to impose state land use and environmental laws  
23 on Reservation activities and to limit and prohibit access to the Reservation violates the  
24 Tribe's sovereign right to make its own laws and be ruled by them and, therefore, is invalid as  
25 a matter of federal law.

26 110. The foregoing controversy between the Tribe and the Defendants presents a  
27 substantial and disputed question of federal law that cannot be resolved without a judicial  
28

1 determination.

2 111. The Tribe is entitled to a declaration pursuant to 28 U.S.C. § 2201 that the  
3 Defendants' conduct violates the Tribe's rights of sovereignty, self-determination, and self-  
4 government.

5 112. The Tribe further is entitled to a preliminary and permanent injunction  
6 pursuant to Fed. R. Civ. P. 65 enjoining and restraining Defendants and any other person or  
7 entity acting on their behalf from limiting or restricting highway access to the Reservation.

8 113. Unless so enjoined by this Court, the Tribe will suffer imminent,  
9 permanent, and irreparable harm for which there is no adequate remedy at law.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff respectfully asks this Court for:

12 1. Declarations pursuant to 28 U.S.C. § 2201 that (a) the Tribe's Reservation  
13 is "Indian country" within the meaning of 18 U.S.C. § 1151; (b) Defendants' conduct exceeds  
14 the scope of state jurisdiction under Public Law 280; (c) Defendants' conduct is preempted by  
15 IGRA; (d) Defendants' conduct is preempted by the IRR system established by 23 U.S.C.  
16 § 204; (e) Defendants' conduct violates IGRA; (f) Defendants' conduct violates Article I,  
17 Section 8, Clause 3 of the Constitution, the Indian Commerce Clause; (g) Defendants' conduct  
18 violates 25 U.S.C. § 177, the Nonintercourse Act; and (h) Defendants' conduct violates the  
19 Tribe's sovereignty, self-determination, and self-governance rights under federal law.

20 2. Injunctive relief pursuant to Federal Rule of Civil Procedure 65 that: (a)  
21 restrains the Defendants and any other person or entity acting on their behalf from applying or  
22 enforcing state land use and environmental laws on the Tribe and tribal activities on the  
23 Reservation; and (b) restrains the Defendants and any other person or entity acting on their  
24 behalf from limiting or restricting highway access to the Reservation.

25 3. All costs and expenses in bringing this action.

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4. Such other relief as the Court deems just and appropriate.

DATED: October 1, 2008

DORSEY & WHITNEY LLP

By:

  
\_\_\_\_\_  
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Telephone: (612) 340-7855  
Facsimile: (612) 340-7855  
(Pro hac vice application pending)

Attorneys for Plaintiff Jamul Indian Village

**EXHIBIT 1**

**EXHIBIT B**

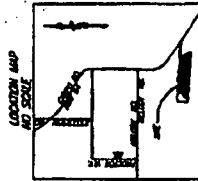
**San Diego County Record of Survey 18236, April 23, 2004**

[See Attached]

RECORD OF SURVEY MAP NO. 18236

SHEET 1 OF 2 SHEETS

RECORD OF SURVEY OF... PART OF THE... COUNTY OF... STATE OF CALIFORNIA...



BASE OF EVIDENCE... THE RECORDS...

MAJOR STATEMENT... THE RECORDS...

MINOR STATEMENT... THE RECORDS...



COUNTY SURVEYOR'S STATEMENT... THE PROFESSIONAL LAND SURVEYOR'S ACT...

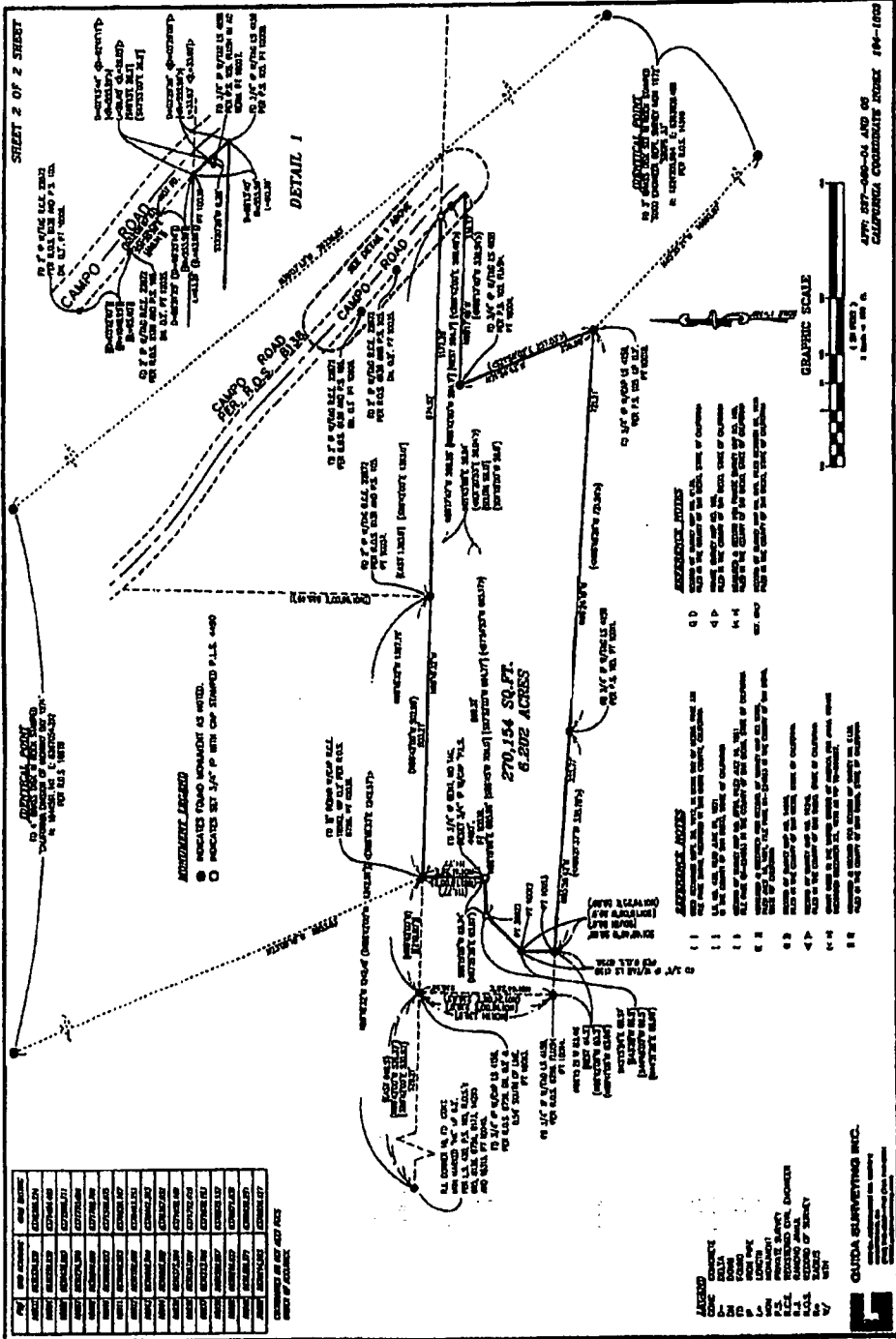


RECORDS STATEMENT... THE RECORDS...

REC. 18236... CALIFORNIA COMMUNAL LANDS...

GUIDA SURVEYING INC. 1000... 916-434-1111

# RECORD OF SURVEY MAP NO. 18236



| NO. | DATE     | BY          | DESCRIPTION      |
|-----|----------|-------------|------------------|
| 1   | 10/15/08 | J. S. S. S. | AS SHOWN ON PLAN |
| 2   | 10/15/08 | J. S. S. S. | AS SHOWN ON PLAN |
| 3   | 10/15/08 | J. S. S. S. | AS SHOWN ON PLAN |
| 4   | 10/15/08 | J. S. S. S. | AS SHOWN ON PLAN |
| 5   | 10/15/08 | J. S. S. S. | AS SHOWN ON PLAN |
| 6   | 10/15/08 | J. S. S. S. | AS SHOWN ON PLAN |
| 7   | 10/15/08 | J. S. S. S. | AS SHOWN ON PLAN |
| 8   | 10/15/08 | J. S. S. S. | AS SHOWN ON PLAN |
| 9   | 10/15/08 | J. S. S. S. | AS SHOWN ON PLAN |
| 10  | 10/15/08 | J. S. S. S. | AS SHOWN ON PLAN |

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**CAUTION SURVEYING INC.**  
 SURVEYING  
 10100  
 P.O. BOX  
 SACRAMENTO, CALIF. 95834

ORIGINAL CIVIL COVER SHEET VIA FAX

JS 44 (Rev. 12/07)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, or as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

JAMUL INDIAN VILLAGE

DEFENDANTS

WILL KEMPTON, Director of the California Dept. of Transportation, PEDRO ORSO-DELCAD, Director, California Dept. of Transportation, JOHN MARKEY, District 11 Permit Manager, California Department of Transportation

(b) County of Residence of First Listed Plaintiff San Diego (EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant Sacramento (IN U.S. PLAINTIFF CASES ONLY)

(c) Attorney's (Firm Name, Address, and Telephone Number) Kent J. Schmidt (195969)/Zachary A. Bulthuis (223825) DORSEY & WHITNEY LLP 38 Technology Drive, Suite 100 Irvine, CA 92618-5310 (949) 932-3600/Fax (949) 932-3601

Attorneys (If Known)

'08 CV 1793 DMS POR

FILED 08 OCT 1 4:06 PM '08 DISTRICT COURT OF CALIFORNIA

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business in This State, Incorporated and Principal Place of Business in Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large grid of checkboxes for various legal categories: CONTRACTS, REAL PROPERTY, PERSONAL INJURY, TORTS, CIVIL RIGHTS, PRISONER MATTERS, LABOR, IMMIGRATION, FORFEITURE/PENALTY, LABOR, SOCIAL SECURITY, FEDERAL TAX SUITS, BANKRUPTCY, OTHER STATUTES.

V. ORIGIN

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from another district (specify), 6 Multidistrict Litigation, 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 18 U.S.C. Section 1151; 23 U.S.C. Section 204; 25 U.S.C. Section 177, 1360, 2701, et seq.; 28 U.S.C. Section 2201. Brief description of cause: Declaratory and Injunctive Relief; Tribal Sovereignty

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE October 1, 2008 SIGNATURE OF ATTORNEY OF RECORD [Signature]

FOR OFFICE USE ONLY RECEIPT # 15551 AMOUNT \$350 APPLYING IFP JUDGE MAG. JUDGE



**UNITED STATES  
DISTRICT COURT**  
SOUTHERN DISTRICT OF CALIFORNIA  
SAN DIEGO DIVISION

# 155551 - TC

October 01, 2008  
16:07:56

**Civ Fil Non-Pris**

USAO #: 08CV1793

Judge.: DANA M SABRAW

Amount.: \$350.00 CK

Check#: BC68205

**Total -> \$350.00**

FROM: JAMUL INDIAN VILLAGE  
VS  
WILL KEMPTON