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January 21, 2011

Jim Comstock, Chairman
County of Lake Board of Supervisors
Courthouse
255 Forbes Street
Lakeport, CA 95453

RE: Letter from Jim Comstock to Tracey Avila, Chairperson, Robinson Rancheria Citizens Business Council, dated January 18, 2011
Our File No. 09-5.7

Dear Chairman Comstock:

Our office is general counsel to the Robinson Rancheria, a federally recognized Indian tribe. Your letter dated January 18, 2011 was referred to my office for a response, because the letter alleged a violation of Section 10.8 of the Tribe's Tribal State Gaming Compact.

First, let me start by correcting a number of factual statements contained in your letter. In your letter, you state that there has been an "absence of information or outreach on the part of" the Tribe with respect to its gas station project; this is simply not true. Despite the fact that the Tribe has received no formal written request for documents or information from the County of Lake or any of its departments, the Tribe has, in fact, responded to phone calls and provided information to both the Lake County Fire District and various elected officials and employees of the County of Lake.

As a result, the Tribe received a letter from the County expressing its concerns over the Tribe's decision to allow traffic to exit the project utilizing Reclamation Road. In response to the County's concerns, the Tribe redesigned the project so that ingress and egress to the project would be from Highway 20.

Second, the Tribe is more than willing to provide you or any other governmental official with information about the project. If you or any other elected officials or department heads or employees of the County of Lake have any questions regarding the Tribe's project, please put those questions in writing, in a letter addressed to the Tribe, in care of me, at the address above for a response. Since you have alleged a violation of Section 10.8 of the Tribe's Compact, the Tribe will require that you or any other County officials or employees put their questions in writing so that there is a written record of

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what information the County requested and what response the Tribe provided to the request.

Third, the Tribe stands ready to meet on the Reservation with the appropriate officials of the County regarding the project if such a meeting is necessary. Once you have made your written request for information to the Tribe and the Tribe has had an opportunity to respond to the request, both the County and the Tribe can determine, at that point, if such a meeting is necessary.

Fourth, while the Tribe, as a courtesy to the County, is willing to provide the County with information about the project and consider any legitimate concerns that it may have that impact the County's off-reservation interests, the Tribe is under no legal obligation to do so.

As you may or may not know, the County of Lake has no jurisdiction to enforce its laws against the Tribe or its members on the Reservation.

Generally, the states lack jurisdiction over Indians and Indian tribes who are engaged in activity on their Indian lands, unless Congress expressly grants jurisdiction to the state. (See, e.g., *McClanahan v. Arizona State Tax Commission* (1973) 411 U.S. 164, 170-171 ["State laws generally are not applicable to tribal Indians on an Indian reservation except where Congress has expressly provided that State laws shall apply."].)

The only federal law that grants the State of California any jurisdiction on the Tribe's Reservation is Public Law 280, 18 U.S.C. § 1162, and 28 U.S.C. § 1360 ("PL 280"). PL 280, however, only granted California limited criminal jurisdiction and granted California courts limited jurisdiction over disputes to which individual Indians are parties. It did not grant jurisdiction over Tribes, as opposed to individual tribal members, and it did not grant civil regulatory jurisdiction to the state. (*Bryan v. Itasca County* (1976) 426 U.S. 373, 389.)

Moreover, only state laws of statewide application apply in Indian Country under PL 280, even if those laws could be classified as criminal rather than civil regulatory. As a result, county and special district ordinances (which, by definition, do not apply throughout the state), cannot be enforced against individual Indians or the Tribe within the boundaries of the Reservation. (See *Santa Rosa Band of Indians v. Kings County* (9th Cir. 1975) 532 F.2d 655, 660 ["P.L. 280 subjected Indian Country only to the civil laws of the state, and not to local regulation."].)

Civil regulatory laws are laws that regulate, rather than prohibit, conduct and which address conduct that is not against the public policy of the state. In deciding whether the state exercises criminal or civil jurisdiction over gambling, for example, the Supreme Court in *State of California v. Cabazon Band of Mission Indians* (1987) 480 U.S. 202, followed its decision in *Bryan* by applying the "criminal prohibitory/civil regulatory" test to make the distinction. That test involves asking whether the state prohibits the activity it seeks jurisdiction over and whether that activity violates the public policy of the state or whether the state permits the activity and merely seeks to regulate the manner in which it is conducted. In the former case, it exercises criminal jurisdiction; in the latter, it exercises civil regulatory jurisdiction. (See, e.g., *Middletown Rancheria of Pomo Indians v. Workers Compensation*

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Appeals Board (CA 1 1998) 60 Cal. App.4th 1340 [Workers Compensation Appeals Board had no jurisdiction over tribal employer operating a casino within the boundaries of its rancheria. The state workers compensation laws were civil regulatory rather than criminal prohibitory.]

Thus, neither the County nor any Districts within the County can enforce its ordinances against the Tribe or individual tribal members on the Reservation, because they are not state laws of statewide application and the County cannot enforce the State's civil regulatory laws, because PL 280 did not grant California jurisdiction to enforce those laws within Indian reservations. The County lacks jurisdiction within the entire exterior boundaries of the Reservation, regardless of whether the land is owned in fee or by the United States in trust for individual Indians or the Tribe.

The Tribe, therefore, has no legal obligation to consult with the County prior to pursuing the development of any project on the Reservation.

Finally, your allegation that the Tribe has violated Section 10.8 of the Compact is contrary to the definition of "*project*" and "*Gaming Facility*" as set forth in the Tribe's Gaming Compact.

Section 10.8.2 (c) defines *project* as any expansion or significant renovation or modification of an existing Gaming Facility, or any significant excavation, construction, or development associated with the Tribe's gaming facility.

Section 2.8 of the Compact defines *Gaming Facility* as "any building in which class 3 gaming activities or gaming operations occur, or in which the business records, receipts, or other funds of the gaming operations are maintained (but excluding off-site facilities primarily dedicated to storage of those records, and financial institutions) and all rooms, buildings, and areas, including parking lots and walkways, a principle purpose of which is to serve the activities of the gaming operation."

Section 2.9 of the Compact defines *gaming operation* as "the business enterprise that offers and operates class 3 gaming activities, whether exclusively or otherwise."

In order for the Tribe's gas station and mini-mart development to be a *project* within the meaning of Section 10.8, the gas station and mini-mart would have to be a "development associated with the Tribe's gaming facility." To be a development associated with the gaming facility, the gas station and mini-mart would have to be a *project* the "principal purpose of which is to serve the activities of class 3 gaming."

There is no doubt that the principal purpose of the mini-mart and gas station development is to sell gasoline and food. The development is not located on the same parcel of land as the Casino, or gaming facility. Furthermore, the development is not located on Indian lands, as defined under the Indian Gaming Regulatory Act as to be eligible for conducting gaming on those lands. Finally, the development is located across the highway and over 100 yards away from the existing gaming facility.

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Clearly, neither the sale of gasoline nor the types of food products that will be sold at the gas station/mini-mart are for the principal purpose of allowing the Tribe to engage in class 3 gaming or to increase gaming revenues.

Rather, the Tribe decided to develop the gas station because it will employ Tribal members and make money for the Tribe independent from the Tribe's gaming facility. In other words, the Tribe would have gone forward with the development of this project even if it did not have a gaming facility.

The Tribe's decision to develop the project is no different than the County's decision to approve the development of the Chevron gas station, mini-mart, and car wash, just west of the Tribe's Casino on Highway 20. And while the County did hold a public meeting to approve that project, as I recall, it did not give the Tribe any special notice or consult with the Tribe in the development stage prior to the approval of that project; just like its approval of the Carl's Junior Hamburger development that is being added to that project.

The bottom line is that the Tribe's gas station and mini-mart project is a stand-alone project independent from and not associated with the Tribe's Casino and therefore, it is not a "*project*" within the meaning of Section 10.8 of the Tribe's Compact.

Because no reasonable interpretation of Section 10.8 of the Compact could include the Tribe's gas station and mini-mart as a "*project*" within the meaning of Section 10.8, I am forwarding a copy of this letter to the California State Gambling Control Commission ("CGCC") for its review. I am confident that the CGCC will agree with my interpretation of the Compact and will not initiate the dispute resolution provisions provided for in the Compact with respect to this issue.

If you have any questions regarding this letter, please direct those questions to me, rather than my clients, at the address or telephone number on the above letterhead.

Yours very truly,



LESTER J. MARSTON
Attorney at Law

LJM/sc

cc: Tracey Avila, Chairperson, and members of the Robinson Rancheria Citizens Business Council
Jaime Campanero, Chairman, Robinson Rancheria Gaming Commission
California Gambling Control Commission