June 30, 2005

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Dear Ms. Albeitz:

On December 29, 2004, you submitted on behalf of the Buena Vista Rancheria of Me-Wuk Indians ("Tribe")[1], a renewed request for an Indian lands determination. On May 17, 2000, a request for a determination had been submitted to the National Indian Gaming Commission (NIGC), but a final opinion was delayed due to a tribal leadership dispute.[2] We have determined that the lands on which the Tribe proposes to locate its gaming activities are "Indian lands" as defined in the Indian Gaming Regulatory Act (IGRA), and, therefore, the Tribe may legally conduct gaming on the land.

Background

The Buena Vista Rancheria of Me-Wuk Indians of California is a federally-recognized Indian tribe. The Tribe has been listed by the Secretary of the Interior as a federally-recognized Indian tribe since 1985. *See* 30 Fed. Reg. 6,055-6,059. The Tribe occupies a small land base located approximately 40 miles southeast of Sacramento, California. The Tribe has occupied the area known as Buena Vista since at least 1817. Tribal members have continuously occupied the Rancheria from as early as 1905. The Rancheria was purchased in 1927 with money appropriated by the Acts of June 21, 1906 (34 Stat. 325-328) and April 30, 1908 (35 Stat. 70-76).

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1 It is important to note that the Tribe, and the land they occupy are often referred to as "the Rancheria." For clarity, whenever possible, we have attempted to use the term "Tribe" when referring to the political entity and "Rancheria" when referring to the Tribe's land base.

2 The NIGC has already approved a site specific Tribal Gaming Ordinance for the Tribe which constitutes a recognition of the Rancheria as Indian lands. Further, a written Indian lands opinion is not required before a Tribe may conduct gaming. However, the Tribe requested the Office of General Counsel to provide an opinion because of the controversy surrounding the proposed gaming operation.

The Acts specifically provided:

> That the Secretary of Interior be, and he is hereby, authorized to expend not to exceed one hundred thousand dollars to purchase for the use of the Indians in California now residing on reservations which do not contain land suitable for cultivation, and for Indians who are not now upon reservation in said State . . . and mark the boundaries of such Indian reservation in the State of California as the Secretary of the Interior may deem proper.

Act of June 21, 1906, Ch. 3504, 34 Stat. 323-333 (1906). On May 5, 1927, the United States acquired approximately 67.5 acres of land in Amador County, California, for the use of the Me-Wuk Indians settled at Buena Vista that is legally described as follows:

> Commencing at the Northeast corner of Section 19, Township 5 North, Range 10 East, M.D.B. and M., thence running West along Section line 578 feet; thence at right angles South 5280 feet; thence at right angles East 578 feet; thence at right angles North 5280 feet to a place of beginning.

The Tribe has proposed to build a gaming facility within the Rancheria on an area of approximately 11.76 acres within the set-aside land. Specifically, the gaming facility will be constructed on a portion of the East ½ of Section 19, T. 5N., R. 10 E., M.D.B.&M., Amador County, California, further described as follows:

> Commencing at a found 1 and ½ inch iron pipe with USIS Cap, monumenting the Northeast Corner of said Section 19, T.5 N., R. 10 E., M.D.B.&M; thence S. 02°03'22" W. (formerly S. 02°03'55" W.) a distance of 1546.50 feet, along the easterly line of said Section 19; thence leaving said easterly section line N. 87°56'22" W. a distance of 47.00 feet, to the True Point of Beginning of this description; thence 02°03'38"W. a distance of 950.50 feet, parallel with and 47.00 feet westerly from said easterly section line; thence N. 87°56'22" W. a distance of 166.00 feet; thence S. 02°03'38" W a distance of 127.00 feet, parallel with said easterly section line; thence S. 88°54'13" a distance of 330.50 feet; thence N. 02°03'38" E. a distance of 1079.65 feet, parallel with said easterly section line; thence S. 89°47'35" E. A distance of 496.26 feet, to the True Point of Beginning.

The Tribe primarily consisted of the Oliver family and their relatives. The tribal members who were on the land prior to the United States purchase are from the same family as those who continue to control the Rancheria today.

In 1958, Congress enacted the California Rancheria Act, Pub. L. No. 85-671 (1958), which authorized the termination of federal supervision and Indian status of many

of the rancherias in the state. As a consequence of the enactment, the residents of the rancherias were no longer dealt with as tribes by the United States government. Additionally, the United States government terminated the trust status of the rancheria lands, including those of the Buena Vista Rancheria, and distributed the lands in fee to the adult Indian residents. P.L. 85-671, 72 Stat. 619 (1958) as amended by P.L. 88-419, 78 Stat. 390 (1964). On April 4, 1961, the Secretary of the Interior approved a plan for the distribution of assets of the Tribe. Under the distribution plan, the United States deeded approximately 67.5 acres of the Rancheria land to Louis and Annie Oliver as joint tenants.

In 1979, Indian residents from the Rancheria joined Indians from sixteen other California Rancherias in a class action lawsuit to restore the reservation status of their land, asserting that their trust relationship had been illegally terminated under the Rancheria Act of 1958. See *Hardwick v. United States*, No. C-79-1710 SW (N.D. Cal. Filed 1979). The plaintiffs sought, among other things, judicial recognition that "[t]he Secretary of the Interior is under a duty to 'unterminate' each of the subject Rancherias, and . . . to hold the same in trust for the benefit of the Indians of the original Rancheria;" and further that " [t]he Secretary of the Interior is under a duty to treat all of the subject Rancherias as Indian reservations in all respects[.]" *Hardwick*, Complaint at 27.

The litigation was ultimately settled. Settlement was achieved through stipulated judgment between the members of the class and the United States and then between the members of the class and the respective counties in which they lay.

The first stipulation, which was between the members of the class and the United States and was approved by federal court order on December 22, 1983, provides, in relevant part, as follows:

> 3. The status of the named individual plaintiffs and other class members of the seventeen Rancherias named and described in paragraph 1 as Indians under the laws of the United States shall be restored and confirmed. In restoring and confirming their status as Indians, said class members shall be relieved of Sections 2(d) [subjecting any property so distributed to taxation] and 10(b) [terminating services provided to Indians] of the California Rancheria Act and shall be deemed entitled to any of the benefits or services provided or performed by the United States for Indians because of their status as Indians, if otherwise qualified under applicable laws and regulations.
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> 4. The Secretary of the Interior shall recognize the Indian Tribes, Bands, Communities or groups of the seventeen rancherias listed in paragraph 1 as Indian entities with the same status as they possessed prior to distribution of the assets of these Rancherias under the California Rancheria

> Act, and said Tribes, Bands, Communities and groups shall be included on the Bureau of Indian Affairs' Federal Register list of recognized tribal entities pursuant to 25 CFR, Section 83.6(b). Said Tribes, Bands, Communities or groups of Indians shall be relieved from the application of section 11 [revoking constitutions under the Indian Reorganization Act[3]] of the California Rancheria Act and shall be deemed entitled to any of the benefits or services provided or performed by the United States for Indian Tribes, Bands, Communities or groups because of their status as Indian Tribes, Bands, Communities or groups.
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> * * *
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> 10. The Secretary of the Interior, named individual plaintiffs, and other class members agree that the distribution plans for these Rancherias shall be of no further force and effect and shall not be further implemented; however, this provision shall not affect any vested rights created thereunder.

Hardwick, Stipulation and Order, Dec. 22, 1983.

The stipulation with the United States left "for further proceedings" the question of whether to restore the former boundaries of the Rancherias. *Id.*, Paragraph 5 at 4. ("The court shall not include in any judgment entered pursuant to this stipulation any determination of whether or to what extent the boundaries of the Rancherias listed and described in paragraph 1 shall be restored and shall retain jurisdiction to resolve this issue in further proceedings herein.").

In 1987, the members of the class from the Buena Vista Rancheria entered into another Hardwick Stipulation for Entry of Judgment regarding Amador County. The 1987 Stipulation provides that:

> The original boundaries of the [Buena Vista Rancheria] as described in paragraph 2.B.1 above [Exhibit A to the Stipulation for Entry of Judgment, filed herein on August 2, 1983, and made the judgment of this Court on December 22, 1983, in Order Approving Entry of Final Judgment] are hereby restored, and all land within these restored boundaries of the [Buena Vista Rancheria] is declared to be "Indian Country." (emphasis in original)

[3]25 U.S.C. § 461 et seq.

Hardwick, Stipulation and Order (Amador County) Para. 2.C., at 4, May 14, 1987. Although the United States was not among the parties that signed the 1987 stipulation, which was primarily designed to resolve issues surrounding the payment of real property taxes to Amador County, the 1987 Stipulation was accepted by the federal court and was entered as a judgment.[4] *Hardwick*, Stipulation and Judgment, filed May 14, 1987. The effect of the judgments was that all lands within the Rancheria boundaries, as they existed immediately prior to the illegal termination, were declared to be "Indian Country" as defined by 18 U.S.C. § 1151. Amador County expressly agreed to treat the Rancheria like any other federally recognized Indian reservation. Thus, the Rancheria consists entirely of the original reservation land base of approximately 67.5 acres.

Applicable Law

The IGRA explicitly defines "Indian lands" as follows:

> (A) all lands within the limits of any Indian reservation; and
> (B) any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power.

25 U.S.C. § 2703 (4).

NIGC regulations have further clarified the Indian lands definition, providing that:

> Indian lands means:
> (a) Land within the limits of an Indian reservation; or
> (b) Land over which an Indian tribe exercises governmental power and that is either --
> (1) Held in trust by the United States for the benefit of any Indian tribe or individual; or
> (2) Held by an Indian tribe or individual subject to restriction by the United States against alienation.

25 C.F.R. § 502.12. Generally, lands that do not qualify as Indian lands under IGRA are subject to state gambling laws. *See National Indian Gaming Commission: Definitions Under the Indian Gaming Regulatory Act*, 57 Fed. Reg. 12382, 12388 (1992).

Further, IGRA gives tribes the exclusive right to regulate gaming on Indian lands, specifically providing that:

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4 While the United States, as co-defendant, did not sign the 1987 stipulation, it did however sign the underlying stipulation that restored the Tribe in 1983. In that stipulation the United States agreed and the Court held that it would not determine the boundaries of the Rancheria yet, but, "shall retain jurisdiction to resolve this issue in further proceedings herein." The stipulated judgment that plaintiff and defendant Amador County finalized in 1987, was one of the "further proceedings" anticipated by the 1983 stipulation. For these reasons, the United States considers itself bound by both stipulations.

> Indian tribes have the exclusive right to regulate gaming activity on Indian lands if the gaming activity is not specifically prohibited by Federal law and is conducted within a State which does not, as a matter of criminal law and public policy, prohibit such gaming activity.

25 U.S.C. § 2701 (5). IGRA further clarifies the jurisdiction of Tribes as to the different class of gaming stating that:

> (1) Class I gaming on Indian lands is within the exclusive jurisdiction of the Indian tribes and shall not be subject to the provisions of this chapter.
> (2) Any class II gaming on Indian lands shall continue to be within the jurisdiction of the Indian tribes, but shall be subject to the provisions of this chapter.

25 U.S.C. § 2710(a)(1)(2). The requirements for Class III gaming likewise state:

> (1) Class III gaming activities shall be lawful on Indian lands only if such activities are--
> (A) authorized by an ordinance or resolution that
> (i) is adopted by the governing body of the Indian tribe having jurisdiction over such lands ...
> (C) conducted in conformance with a Tribal-State compact entered into by the Indian tribe and the State under paragraph (3) that is in effect.

25 U.S.C. § 2710(d)(1)(A)(C).

Analysis

The NIGC Office of General Counsel (OGC) has revised its analytic approach to Indian lands within reservation boundaries. The analysis used through the past few years included a two-part determination whenever an Indian lands questions was raised – OGC looked first to determine whether the lands constituted Indian lands; OGC then looked to whether the tribe exercised jurisdiction over those lands. This two-part analysis was driven by the outcome in *Kansas v. United States*, 86 F. Supp. 2d 1094 (D. Kan. 2000), *aff'd* 249 F.3d 1213 (10th Cir. 2001)(*Miami III*). That Court held the NIGC's failure to focus on the threshold question of whether the tribe possessed jurisdiction over a tract of land rendered the ultimate conclusion arbitrary and capricious. *Id.* Despite this holding, the NIGC has concluded that, in some instances IGRA's preemptive effect negates the need for a complete jurisdictional analysis. IGRA specifically defines Indian lands as any "[l]ands within the limits of an Indian Reservation." This finding is a prerequisite for a tribe to be able to conduct gaming under IGRA. IGRA gives tribes the exclusive right to regulate gaming on Indian lands if the Indian lands in question are within "such tribe's jurisdiction." A tribe is presumed to have jurisdiction over its own reservation. Therefore, if the gaming is to occur within a tribe's reservation, under IGRA, we can presume that jurisdiction exists.

OGC's new approach was outlined in our recent opinion regarding gaming on fee land at the White Earth Reservation in Minnesota (See Memorandum to NIGC Acting General Counsel Re: Tribal jurisdiction over gaming on fee land at White Earth Reservation, dated March 14, 2005). In that opinion, we opined that the State of Minnesota lacked jurisdiction over gaming on the White Earth Reservation because the gaming took place within the exterior boundaries of the reservation; the gaming was therefore Indian gaming under IGRA, which pre-empts state jurisdiction. As the White Earth Band was undisputedly the only tribe exercising jurisdiction over the land at White Earth, that Tribe met IGRA's requirement that it be the tribe with jurisdiction over the Indian lands at issue. As a result of our analysis on White Earth we have taken this opportunity to revisit and revise our analytic approach.

It is still appropriate under the second 2703(B) definition of Indian lands to conduct a separate jurisdictional analysis when determining whether a tribe exercises governmental powers. This is because a necessary prerequisite to the exercise of governmental powers is the theoretical and inherent authority to exercise such power. However, with respect to the first definition of Indian lands – that the lands are within the reservation boundaries, we conclude that the preemptive effect of IGRA eliminates the need for a separate jurisdictional analysis.

The issue here is, therefore, whether a gaming operation conducted on the Rancheria would be on Indian lands. If the Rancheria is considered a reservation under the definition of Indian lands, the Tribe may game on those lands.

1. IGRA Preempts The Field Of Gaming On Indian Lands

Generally, there exists a presumption that federal law does not pre-empt State regulation, particularly in a field that States have traditionally occupied. *See New York v. FERC*, 535 U.S. 1, 17-18 (2002); *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996) (First, "[i]n all pre-emption cases, and particularly in those [where] Congress has legislated . . . in a field which the States have traditionally occupied, we start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress".). The presumption against federal preemption disappears, however, in the face of Congress's "clear and manifest purpose" to the contrary. *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947).[5] Such purpose is evidenced when the field of regulation has been

[5] "Such a purpose may be evidenced in several ways. The scheme of federal regulation may be so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it. *Pennsylvania R. Co.* v. *Public Service Comm'n*, 250 U.S. 566, 569; *Cloverleaf Butter Co.* v. *Patterson*, 315 U.S. 148. Or the Act of Congress may touch a field in which the federal interest is so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject. *Hines* v. *Davidowitz*, 312 U.S. 52. Likewise, the object sought to be obtained by the federal law and the character of obligations imposed by it may reveal the same purpose. *Southern R. Co.* v. *Railroad Commission*, 236 U.S. 439; *Charleston & W. C. R. Co.* v. *Varnville Co.*, 237 U.S. 597; *New York Central R. Co.* v. *Winfield*, 244 U.S. 147; *Napier* v. *Atlantic Coast Line R. Co.*, 272 U.S. 605. Or the state policy may produce a result inconsistent with the objective of the federal statute. *Hill* v. *Florida*, 325 U.S. 538. It is often a perplexing

substantially occupied by federal authority for an extended period of time. *United States v. Locke*, 529 U.S. 89, 108 (2000); *Flagg v. Yonkers S&L Ass'n*, 396 F.3d 178, 183 (2nd Cir. 2005).

Indian affairs has a long history of Federal authority taking precedence over State jurisdiction. *See Rice v. Olson*, 324 U.S. 786, 789 (1945) (citing *Worcester* v. *Georgia*, 6 Pet. 515; 1 Stat. 469; 4 Stat. 729). As recently expressed by the U.S. Court of Appeals for the Ninth Circuit:

> The policy of leaving Indians free from State jurisdiction is deeply rooted in our Nation's history. *Rice v. Olson*, 324 U.S. 786, 789 (1945). In determining the extent of State jurisdiction over Indians, State laws are not applicable to tribal Indians on an Indian reservation except where Congress has expressly intended that State laws shall apply. *McClanahan v. Ariz. State Tax Comm'n*, 411 U.S. 164, 170-71 (1973). If faced with two reasonable constructions of Congress's intent, this Court resolves the matter in favor of the Indians. *Id.* at 174.

Gobin v. Snohomish County, 304 F. 3d 909 (9th Cir. 2002), *cert. denied* 538 U.S. 908 (2003).

IGRA is an heir to this history. The legislative history of the Act incorporates this history. The Senate Report on S. 555, which became IGRA, states:

> It is a long- and well-established principle of Federal-Indian law as expressed in the United States constitution, reflected in Federal statutes, and articulated in decisions of the Supreme Court, that unless authorized by an act of Congress, the jurisdiction of State governments and the application of state laws do not extend to Indian lands. In modern times, even when Congress has enacted laws to allow a limited application of State law on Indian lands, the Congress has required the consent of tribal governments before State jurisdiction can be extended to tribal lands.

S.Rep. No.446, 100th Cong., 2d Sess. 6 (1988), reprinted in 1988 U.S.C.C.A.N. 3071, 3075.

More explicitly, IGRA's legislative history shows clear Congressional intent that the Act be preemptive. The Senate Report declares:

> S. 555 is intended to expressly preempt the field in the governance of gaming activities on Indian lands. Consequently, Federal courts should not balance

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question whether Congress has precluded state action or by the choice of selective regulatory measures has left the police power of the States undisturbed except to the extent that state and federal regulations collide. *Townsend* v. *Yeomans*, 301 U.S. 441; *Kelly* v. *Washington*, 302 U.S. 1; *South Carolina Highway Dept.* v. *Barnwell Bros.*, 303 U.S. 177; *Union Brokerage Co.* v. *Jensen*, 322 U.S. 202; Rice v. Santa Fe Elevator Corp., 331 U.S. at 230.

> competing Federal, State, and tribal interests to determine the extent to which various gaming activities are allowed.

Id. at 3076. [6]

Case law also acknowledges IGRA's preemptive effect. The U.S. Court of Appeals for the Eighth Circuit, in which the White Earth reservation falls, has directly addressed this question. In *Gaming Corp. of America v. Dorsey & Whitney*, 88 F. 3d 536 (8th Cir. 1996), the Eighth Circuit held that IGRA completely preempted state law where the dispute—a management company's suit against a tribe's legal representatives—arose from the tribe's issuance of gaming licenses, which is covered by IGRA. "Examination of the text and structure of IGRA, its legislative history, and its jurisdictional framework likewise indicates that Congress intended it completely preempt state law," the court ruled. *Id.* at 544. Likewise in *Missouri ex rel. Nixon v. Coeur D'Alene Tribe*, 164 F.3d 1102 (8th Cir. 1999), the Eighth Circuit held that the question of whether an activity is pre-empted by IGRA is determined by whether it occurs on Indian lands:

> As our opinion in *Dorsey* explained at length, the IGRA established a comprehensive regulatory regime for tribal gaming activities on Indian lands. Both the language of the statute and its legislative history refer only to gaming on Indian lands. See, e.g., 25 U.S.C. § 2701; S. Rep. No. 100-446, reprinted in 1988 U.S.C.C.A.N. 3071, 3071-3083. The Indians' long-standing rights and interests in controlling activities on their tribal lands, and the States' correspondingly limited power to regulate activities on tribal lands except as authorized by Congress, are core principles underlying the IGRA that necessarily frame the scope of its preemptive force.

Id. at 1108. In short, the court ruled States' powers are pre-empted where IGRA applies, and IGRA applies on Indian lands.[7]

In *Coeur d'Alene Tribe v. Idaho*, 842 F.Supp. 1268 (D. Idaho 1994), *aff'd* 51 F.3d 876 (9th Cir. 1995), *cert. denied* 516 U.S. 916 (1995), *rehearing denied* 516 U.S. 1018 (1995), the federal district court reasoned that IGRA allows state gaming regulations to apply on an Indian reservation. The authority of the state to conduct gaming was not absolute, however. Rather, the scope of State regulation was to be determined by

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[6] *See also* Additional Views of Mr. Evans, S.Rep. No. 446, 100th Cong., 2d Sess. 36 (1988) ("Finally, this bill should be construed as an explicit preemption of the field of gaming in Indian Country.").

[7] There is some case law to the contrary. The federal district court for the Eastern District of Washington held in 1996 that IGRA did not prevent the State of Washington from conducting the state lottery on lands within the Yakama Indian Reservation. *Confederated Tribes and Bands of the Yakama Indian Nation v. Lowry*, 968 F. Supp. 531 (E. D. Wash. 1997) (order granting motion to dismiss; 968 F. Supp. 538 (E.D.Wash.1997) (Order denying motion for reconsideration); *vacated* 176 F.3d 467 (9th Cir. 1999). That decision was vacated by the Ninth Circuit in 1999, however, albeit on the grounds that the State was immune from the Tribe's suit based on the State's Eleventh Amendment sovereign immunity. Because the action was "so clearly barred" by the Eleventh Amendment, the Ninth Circuit deemed it inappropriate to determine "the more complex issues" raised by the case.

negotiated compacts between tribes and the States, the court held. The state lottery was Class III gaming, the court said. *Id.* Lacking compacts, neither the tribes nor, more to the point, the State could conduct a lottery on the reservations, the court concluded. This reasoning confirms IGRA's preemptive character, allowing state regulation only under IGRA's provisions.

Accordingly, since IGRA is preemptive as to gaming on Indian lands, our analysis of the legality of Indian gaming starts and stops when we answer the question – Is this gaming on Indian lands?

2. The Rancheria is a Reservation

Because the Rancheria is a reservation under the IGRA definition of Indian lands, we conclude that the Tribe may conduct gaming on it.

It is well established that Rancherias are "for all practical purposes" reservations. *See* Solicitor's Opinion, M-28958 (April 26, 1939), 1 *Op. Sol. On Indian Affairs* 891 (U.S.D.I. 1979). The Buena Vista Rancheria has a history similar to that of the Pinoleville Indian Community. The Pinoleville Rancheria was terminated according to the Rancheria Act and subsequently restored in the *Hardwick* settlement stipulations. *Governing Council of Pinoleville Indian Community v. Mendocino County*, 684 F. Supp. 1042, 1043-1044 (N.D. Cal. 1988). In *Pinoleville* the Rancheria challenged a County imposed moratorium on new industrial uses on the Rancheria. The court considered the effect of the *Hardwick* judgments on the Tribal Council's power to regulate, and determined that "the clear and fundamental intent of the judgment [was] to restore *all* land within the original Rancheria as Indian Country and Mendocino Country's express undertaking [was] to treat the *entire* Rancheria as reservation[.] *Id.* at 1046 (emphasis in original). The court held that the Tribal Council had the authority to zone non-Indian fee land within the boundaries of the Rancheria. *Id.* at 1045. The court also cited a letter from the Bureau of Indian Affairs which stated: "[i]t is our opinion that the Pinoleville Indian Community has the authority to enact an ordinance which restricts land use by anyone within their exterior boundaries when such use has been deemed detrimental to the health or welfare of the Pinoleville Indian Community. B.I.A. letter at 1 (emphasis in original)." *Id.* at 1042. Thus, Rancherias restored by the *Hardwick* stipulated judgments are treated by the County and the Bureau of Indian Affairs like any other Indian reservation.[8]

Numerous other courts have also concluded that rancherias are the equivalent of reservations. *See City of Roseville v. Norton*, 348 F.3d 1020, 1021 (D.C. Cir. 2003) (stating that the Auburn Indian Restoration Act (AIRA) authorized the creation of a new

[8] Furthermore, when discussing the status of the Robinson Rancheria (not a *Hardwick* Rancheria), the court in *Duncan v. United States*, 667 F.2d 36, 41, 229 Ct. Cl. 120, 128 (1981), *cert. denied*, 463 U.S. 1228 (1983), held that "Congress clearly contemplated that this land have the same general status as reservation lands." *See generally* United States Department of the Interior, Federal Indian Law 609 (rev. ed. 1958) (it is not necessary that Congress use the word "reservation" to create Indian reservation lands); *United States v. McGowan*, 302 U.S. 535, 538-39 (1938).

"reservation" for the restored tribe and that parcels of land became the tribe's reservation by operation of law); *Artichoke Joe's Cal. Grand Casino v. Norton*, 353 F.3d 712 (9th Cir. 2003) (stating "rancherias are small Indian reservations"); *Santa Rosa Band of Indians v. Kings County*, 532 F.2d 655, 657 (9th Cir. 1975) (stating California Rancherias are Indian reservations).

Finally, the *Hardwick Stipulation for Entry of Judgment* entered into between Amador County and the Indians of the Buena Vista Rancheria, specifically states that the Rancheria is "Indian Country" and that the Rancheria shall "be treated by the County of Amador and the United States of America, as any other federally recognized Indian reservation, . . ." *Hardwick*, Stipulation and Order, April 21, 1987.

Therefore, the lands within the Rancheria are likewise within the limits of a reservation. Further, because the lands at issue qualify as a reservation they need not be taken into trust. Subsection (A) defines Indian lands to include "all lands within the limits of any Indian reservation." *See* 25 U.S.C § 2703(4)(A). IGRA does not require that lands within the boundaries of a reservation be held in trust. By providing that "all lands" within a reservation are Indian lands, it is clear that Congress did not intend to include an additional requirement that the lands also be held in trust to be qualified under IGRA.

Subsection (B) categorizes lands as Indian lands if they are either held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power. *See* 25 U.S.C § 2703(4)(B). The Indian lands definition is subject to the requirements of subsection (B) only if subsection (A) does not apply. Because Subsection (A) does apply (the Rancheria is a reservation), we need not address subsection (B).

3. The Proposed Gaming Facility is located within the Rancheria

The land at issue in this matter is fee land within the exterior boundaries of the Buena Vista Rancheria. The land thus falls within the "limits" of the reservation and meets the definition of Indian lands under IGRA, 25 U.S.C. § 2703(4)(A), and NIGC's regulations, 25 C.F.R. §502.12(a).

In different circumstances, we would engage in a more lengthy analysis. For example, if the land at issue were trust land, outside the limits of the reservation, we would need to engage in a two-part analysis: (1) examining if the land were held in trust or subject to restriction, and (2) determining whether the Tribe exercised governmental power over that land. *See* 25 C.F.R. § 502.12(b). Furthermore, in order to prove the Tribe's exercise of actual governmental power, we would also need to prove theoretical jurisdiction. *Kansas v. United States*, 86 F. Supp. 2d 1094 (D. Kan. 2000), *aff'd* 249 F.3d 1213 (10th Cir. 2001) (*Miami III*). Since the land at issue at Buena Vista is not trust land, however, we need examine only one issue: whether the land is within the limits of the

reservation. Finding that it is within the exterior boundaries of the reservation, we conclude that the land constitutes Indian lands and that IGRA therefore applies.

We do, however, need to evaluate jurisdiction in the sense that we need to determine whether the Tribe is the tribe that exercises jurisdiction over the land at the Rancheria. IGRA states that a tribe may engage in Class II gaming "on Indian lands within such tribe's jurisdiction" if, among other things, the tribe has an ordinance approved by NIGC's Chairman. 25 U.S.C. §2710(b)(1). The requirements for conducting Class III gaming likewise state: "Class III gaming activities shall be lawful on Indian lands only if such activities are (A) authorized by an ordinance or resolution that (i) is adopted by the governing body of the Indian tribe having jurisdiction over such lands...." 25 U.S.C. §2710(d)(1).

The context of IGRA's prescriptions as to jurisdiction—that land be within "such tribe's jurisdiction" and ordinances adopted by "the Indian tribe having jurisdiction over such lands"—indicates that Congress intended that gaming on any specific parcel of Indian lands not be conducted by any Indian tribe, but only by the specific tribe or tribes with jurisdiction over that land. *See, e.g., Williams v. Clark*, 742 F.2d 549 (9th Cir. 1984), *cert. denied sub nom. Elvrum v. Williams*, 471 U.S. 1015 (1985) (member of either Quileute or Quinault tribes is permissible devisee of Quinault Reservation land, since both tribes exercise jurisdiction over Reservation, and members of both tribes may be considered member of "tribe in which the lands are located" for purposes of Indian Reorganization Act § 4). The Buena Vista Rancheria ratified its Constitution on August 24, 2004. The Tribal Constitution specifically denotes the Tribe's jurisdiction to cover all lands within the boundaries of the Rancheria. Therefore, the Tribe clearly retains jurisdiction to regulate gaming on lands within its boundaries.

Because the Tribe is undisputedly the only tribe that exercises jurisdiction over the Rancheria, the Tribe meets IGRA's requirements that it be the tribe with jurisdiction over the Indian lands at issue.

Conclusion

We conclude that the proposed gaming operation is located on lands considered "Indian lands" pursuant to 25 U.S.C. § 2703(4)(A).

The Department of the Interior, Office of the Solicitor, concurs in our opinion. If you should have any additional questions regarding this matter, please call John Hay.

Very truly yours,

//s//
Penny J. Coleman
Acting General Counsel

cc: Director, Office of Indian Gaming Management