Case No. A140203
Sonoma County Superior Ct. No. SCV-251712

IN THE COURT OF APPEAL OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

STOP THE CASINO 101 COALITION, ET AL.
Plaintiffs and Appellants,

vs.

EDMUND G. BROWN, JR.,
Defendant and Respondent.

ON APPEAL FROM THE SUPERIOR COURT
IN AND FOR SONOMA COUNTY
HONORABLE ELLIOT L. DAUM

APPELLANTS' OPENING BRIEF

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TO BE FILED IN THE COURT OF APPEAL APP-008

COURT OF APPEAL, FIRST APPELLATE DISTRICT, DIVISION THREE	Court of Appeal Case Number A140203
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Michael T. Healy Cal. Bar # 133718 — Law Office of Michael T. Healy 11 Western Avenue Petaluma, CA 94952 TELEPHONE NO. (707)762-8768 FAX NO (Optional) (707)762-7589 E-MAIL ADDRESS (Optional) mthealy#sbcglobal.net ATTORNEY FOR (Name): Appellants Stop the Casino 101 Coalition, et al.	Superior Court Case Number SCV-251712 FOR COURT USE ONLY
APPELLANT/PETITIONER: Stop the Casino 101 Coalition, et al. RESPONDENT/REAL PARTY IN INTEREST: Edmund G. Brown, Jr.	
CERTIFICATE OF INTERESTED ENTITIES OR PERSONS (Check one): ☑ INITIAL CERTIFICATE ☐ SUPPLEMENTAL CERTIFICATE	

Notice: Please read rules 8.208 and 8.488 before completing this form. You may use this form for the initial certificate in an appeal when you file your brief or a prebriefing motion, application, or opposition to such a motion or application in the Court of Appeal, and when you file a petition for an extraordinary writ. You may also use this form as a supplemental certificate when you learn of changed or additional information that must be disclosed.

1. This form is being submitted on behalf of the following party (*name*): All Appellants

2. a. ☐ There are no interested entities or persons that must be listed in this certificate under rule 8.208.

   b. ☑ Interested entities or persons required to be listed under rule 8.208 are as follows:

Full name of interested entity or person	Nature of interest (Explain):
(1) Fed. Indians of Graton Rancheria	Owner of subject casino
(2) Station Casinos, Inc.	Business partner of tribe in subject casino
(3) Stop the Casino 101 Coalition	Plaintiff
(4) Marilee Montgomery	Plaintiff
(5) Pam Miller	Plaintiff

☑ Continued on attachment 2.

The undersigned certifies that the above-listed persons or entities (corporations, partnerships, firms, or any other association, but not including government entities or their agencies) have either (1) an ownership interest of 10 percent or more in the party if it is an entity; or (2) a financial or other interest in the outcome of the proceeding that the justices should consider in determining whether to disqualify themselves, as defined in rule 8.208(e)(2).

Date: November 21, 2013

Michael T. Healy
(TYPE OR PRINT NAME)

▶ _____
(SIGNATURE OF PARTY OR ATTORNEY)

Attachment 2

2. b.	Full name of interested entity or person	Nature of interest *(Explain):*
(6)	Fred Soares	Plaintiff

PROOF OF SERVICE

I, the undersigned, hereby certify that I am a citizen of the United States, over the age of 18 years and am not a party to the within entitled action. I am employed in the City & County of San Francisco, California and my business address is One Embarcadero Center, Suite 400, San Francisco, CA 94111-3619. I am an active member of the State Bar of California. I am readily familiar with my employer's practice for collection and processing of correspondence for mailing with the United States Postal Service. On the date last written below, I served the following document(s):

CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

on the parties to this action, through their respective attorneys of record, by placing a true and correct copies thereof in sealed envelope(s) addressed as shown below and served them as checked:

(1) ✓ ***By First Class Mail:*** Following ordinary business mailing practices, I placed the sealed envelope(s), with first class postage thereon fully prepaid, for collection and mailing, with the United States Postal Service at the appropriate place within our office where it would be picked up and deposited with the United States Postal Service that same day in the ordinary course of business. The envelope(s) was/were addressed to:

William L. Williams, Jr. — *Attorney for Defendants/Appellees*
Deputy Attorney General
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550

(2) ___ ***By Personal Service:*** I personally delivered each such envelope to the addressee (or to the addressee's office, marked to the attention of the addressee).

(3) ___ ***By US Postal Service Express Mail:*** Following ordinary business practices, I deposited each such envelope, with Express Mail postage thereon fully prepaid, in a United States Postal Service Express Mail depository at San Francisco, California, for next day delivery.

(4) ___ ***By Federal Express:*** Following ordinary business practices, I delivered each such envelope, with shipping charges fully prepaid, to a Federal Express depositary or to a Federal Express agent at Federal Express Corporation at San Francisco, California, for next business day delivery.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct and that this Proof of Service was signed by me on November 22, 2013 at San Francisco, California.

Robert D. Links

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QUESTION PRESENTED

Did the federal government's acceptance of title to real property, in trust for the Federated Indians of Graton Rancheria, automatically divest California of some or all of its jurisdiction over the property and vest that jurisdiction in the Tribe, thus making the Tribe eligible to negotiate a gaming compact pursuant to the California Constitution and the federal law incorporated therein?

CONSTITUTIONAL & STATUTORY PROVISIONS AT ISSUE

California Constitution, Art. IV, Section 19 (e) & (f) (emphasis added):

(e) The Legislature has no power to authorize, and shall prohibit casinos of the type currently operating in Nevada and New Jersey.

(f) Notwithstanding subdivisions (a) and (e), and any other provision of state law, the Governor is authorized to negotiate and conclude compacts, subject to ratification by the Legislature, for the operation of slot machines and for the conduct of lottery games and banking and percentage card games by federally recognized Indian tribes on *Indian lands* in California *in accordance with federal law.* Accordingly, slot machines, lottery games, and banking and percentage card games are hereby permitted to be conducted and operated on tribal lands subject to those compacts.

Indian Gaming Regulatory Act, 25 U.S.C. § 2710(d)(1) (emphasis added):

(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*,

* * *

(B) located in a State that permits such gaming for any purpose by any person, organization, or entity, and

(C) conducted in conformance with a Tribal-State compact entered into by the Indian tribe and the State....

STATEMENT OF APPEALABILTY

Appellants appeal from the trial court's entry of judgment, which followed the court's order granting the Governor's motion for summary judgment. (See Joint Appendix (hereinafter "JA") at 5 JA 1272-1274 (judgment); 5 JA 1269-1297 (notice of entry of judgment); and 5 JA 1298-1300 (notice of appeal).)

The judgment appealed from is final.

STANDARD OF REVIEW

On appeal from the grant or denial of a motion for summary judgment, the appellate court exercises independent *de novo* review. (*Wiener v. Southcoast Childcare Centers, Inc.* (2004) 32 Cal.4th 1138, 1142.) The issue here, being a question of law, is also subject to independent *de novo* review. (*Aryeh v. Canon Bus. Solutions, Inc.* (2013) 55 Cal.4th 1185, 1191.)

Moreover, the papers of the party moving for summary judgment are strictly construed, and any doubts as to the propriety of granting the motion are to be resolved in favor of the party opposing the motion. (*Lonicki v. Sutter Health Central* (2008) 43 Cal.4th 201, 206.)

INTRODUCTION

In California, casino gambling has long been illegal. However, in 2000 the voters adopted Proposition 1A which amended the state constitution to permit an Indian tribe to engage in casino gaming in accordance with federal law. The pertinent federal statute—the Indian Gaming Regulatory Act ("IGRA," 25 U.S.C. §§ 2701, et seq.)—allows such activity only if the tribe has jurisdiction over the casino site.

This case involves a tribal casino situated on land over which the State of California has exercised exclusive jurisdiction over for over 150 years. The state has not relinquished any of that jurisdiction.

In 2010, private parties transferred the land to the federal government in trust for the Graton Indians. The tribe and the state assumed that jurisdiction transferred automatically, and they proceeded to enter into a compact to regulate casino gaming on the property.

As we shall explain, the jurisdictional assumption made by the state and the tribe is wrong. In a case such as this, jurisdiction shifts only when the state formally cedes it to the federal government and the federal government, in turn, formally accepts the cession. Because those formalities did not occur here, the Graton Indians are operating a casino on land over which they do not have jurisdiction. For that reason, the compact and the statute ratifying it (Gov. Code § 12012.56(a)) violate both the state constitution and IGRA and should be struck down.

The trial court's judgment to the contrary should be reversed.

SUMMARY OF ARGUMENT

This case involves fundamental principles of jurisdiction that go to the heart of California's state sovereignty. The question presented is whether the federal government's acceptance of legal *title* to a 254-acre parcel of real property in Sonoma County divests the State of California of *jurisdiction* over the site such that state laws prohibiting casino gambling no longer govern the property.

We contend that *title* and *jurisdiction* are two very different aspects of dominion over real property, and that the process for acquisition of jurisdiction is completely different from the process to acquire title. For that reason, the fact that the Graton Indians hold beneficial title to the land in question does not entitle them to exercise jurisdiction over that land. Jurisdiction remains with the state unless and until it is formally ceded to another governing entity.

This case also involves a new phenomenon: the purchase by Indian tribes and/or their financial partners of privately-owned, state-governed lands in or near urban areas where the population is almost all non-Indian; followed by the transfer of title to such lands to the federal government in trust for the tribe; followed further by the claim (based on a widely held misconception) that the mere transfer of title

divested the state of its long-standing jurisdiction to govern gambling at the site and somehow automatically vested that jurisdiction in the Tribe. The problem with analysis along this line of reasoning is that it erroneously conflates concepts of *title* and *jurisdiction.*

The scenario presented by this case suffers from a further problem: it violates the intent of the voters when they approved Proposition 1A. In response to concerns that the Proposition would allow Nevada-style gambling throughout the state, proponents assured voters that Proposition 1A strictly limited Indian gaming to traditional tribal lands which are located in "remote" areas. (2 JA 534.)

More important, the casino at issue here violates the letter of Proposition 1A as much as its spirit, for the clear language of the constitutional amendment allows Indian gaming only on Indian lands and only "in accordance with federal law." (Cal. Const., Art. IV, § 19(f).) Federal law—namely IGRA—permits casino gambling only on Indian land over which the tribe has jurisdiction. (See 25 U.S.C. § 2710(d)(1)(A).)

The principles of jurisdiction on which IGRA is based were established over 125 years ago. The federal government cannot exercise legislative powers reserved to the states over land within a

state's borders without a cession of jurisdiction from the state. Nor can the federal government unilaterally divest the state of jurisdiction. Rather, the state must give its consent, and courts cannot find consent based on implication. As a result, when the federal government buys lands within a state, it acquires only a proprietary interest unless and until the state affirmatively cedes its jurisdiction, in whole or in part.

That basic step did not occur here. Although the Graton Rancheria Restoration Act (25 U.S.C. § 1300n) recognized the tribe, ordered the Secretary of the Interior to accept title to the site in trust for the Graton, and even designated the land a reservation, these unilateral actions by the federal government cannot alter legislative jurisdiction over the site. As the Governor conceded (5 JA 1330:18-23)—and as the trial court found (see 5 JA 1281)—California has not ceded its jurisdiction over the site to the federal government.

That finding should have been conclusive. Because there has been no cession of jurisdiction, these lands are still under state jurisdiction and still subject to state law, which prohibits casino gambling. The tribal-state compact challenged by appellants thus was not authorized by Proposition 1A and violates the law.

The lower court failed to address the jurisdiction issue. Instead, despite a finding that the federal government's acquisition of the subject property did not result in a change in jurisdiction, the court summarily concluded that "all the requisites" for a tribal-state gambling compact had been satisfied by the Graton Act (5 JA 1292).

Appellants contend that the trial court's validation of the Graton compact and upholding of Government Code section 12012.56 were erroneous as a matter of law and must be reversed.

PROCEDURAL HISTORY

This is an action for declaratory and injunctive relief. It was filed by a community coalition and several local residents who oppose the Graton Casino. The complaint was filed just four days after the effective date of the legislative approval of the compact that authorizes the Graton casino to operate. (1 JA 1.)[1]

At the time the original complaint was filed, no construction had begun at the casino site. On June 14, 2012—before groundbreaking for the casino—appellants sought a temporary

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[1] Government Code section 12012.56 became effective on May 17, 2012 (2 JA 361). Appellants' original complaint in this case was filed on May 21st.

restraining order and preliminary injunction. (1 JA 30-330.) That request for relief was denied by the trial court. (2 JA 331-333.)

The operative pleading is appellants' second amended complaint. Only the first cause of action is relevant to this appeal; it requests a declaration that the statute approving the Graton gambling compact (Gov. Code § 12012.56(a)) is illegal because the tribe does not have jurisdiction over the subject property and, therefore, the compact is not in compliance with IGRA and by virtue of that fact, not in compliance with the California Constitution.[2]

There is no dispute over the material facts. Indeed, this case presents a straightforward issue of law. For that reason, both sides filed cross motions for summary judgment. The court below granted the Governor's motion; denied the one filed by appellants; and issued a 14-page memorandum of decision. (5 JA 1280-1293.) The memorandum discusses the various contentions but does not analyze, much less rule upon, the fundamental issue raised by appellants, *to wit*, that state law on Indian gaming looks to federal law; that federal law allows Indian gaming only on lands over which the tribe has

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[2] Appellants dismissed the second cause of action prior to the hearing of the subject motions, and that claim is not part of this appeal. (3 JA 716.)

jurisdiction; and the Graton Tribe has only beneficial *title* to, and not any *jurisdiction* over, the subject site.

Following issuance of the summary judgment ruling, the trial court dismissed appellants' complaint and entered judgment. That judgment is final. This appeal followed.

FACTS OF THE CASE

The Casino Site

The land in question is the site of the Graton Casino, a 254-acre parcel located mostly adjacent to, but partially within, the city limits of Rohnert Park. (1 JA 86 & 184-188.) The casino site was privately owned and was unquestionably governed by state law from the time the State of California was admitted into the Union in 1850 until 2010. (2 JA 541-555 (Decl. of Stephen Crotty).) Appellants contend that the site still is governed by state law.

The site was not part of the original Graton Rancheria which was located on a 15.45-acre parcel near the small rural town of Graton. (See H.R. Rep. No. 106-677, 2d Sess., at p. 4 (2000) (available at http://www.gpo.gov/fdsys/pkg/CRPT-106hrpt677/pdf/CRPT-106hrpt677.pdf (last accessed Feb. 25, 2014)); see also

http://en.wikipedia.org/wiki/Federated_Indians_of_Graton_Rancheria (last accessed Feb. 25, 2014).)

The population in the area is generally non-Indian. American Indians represent only 2.2% of the population in Sonoma County and only 1% of the population near Rohnert Park. (U.S. Dept. of Commerce, Census Bureau, 2010 Census of Population and Housing, Quick Facts: California (available at http://quickfacts.census.gov/qfd/states/06/06097.html (Sonoma County); http://quickfacts.census.gov/qfd/states/06/0662546.html (Rohnert Park) (last accessed Feb. 25, 2014).)

The Graton Rancheria Restoration Act

In 2000, Congress passed the Graton Rancheria Restoration Act. The Act recognized the tribe and made tribal members eligible "for all federal services and benefits furnished to federally recognized Indian tribes or their members." (25 U.S.C. § 1300n-2.)

The Graton Act also provides:

> Upon application by the [Graton] Tribe, the Secretary [of the Interior] shall accept into trust for the benefit of the Tribe any real property located in Marin or Sonoma County, California, for the benefit of the Tribe after the property is conveyed or otherwise transferred to the Secretary....

(25 U.S.C. § 1300n-3(a).) The Graton Act also states that any

real property taken into trust for the benefit of the tribe "shall be part of the Tribe's reservation." (25 U.S.C. § 1300n-3(c).)

The Graton Act does not contain any language that mentions or alters jurisdiction over the real property.[3] The only Congressional report that accompanied this legislation makes clear that the legislation "is not intended to preempt any State, local or tribal law." (H.R. Rep. No. 106-677, 2d Sess., at p. 3 (2000) (this report is in the record; see 5 JA 1183).)

SC Sonoma Development LLC Acquires Title

In 2005, the casino site was acquired by an entity known as "SC Sonoma Development LLC," a subsidiary of Station Casinos, LLC, a Nevada-based casino operator. (2 JA 555.)[4]

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[3] The statutory silence as to jurisdiction is telling. Compare and contrast the Graton Act with the statute Congress enacted to authorize that land be taken into trust for the Pokagon Band of Potawatomi Indians, which reads: "The Band shall have jurisdiction to the full extent allowed by law over all lands taken into trust for the benefit of the Band by the Secretary." (25 U.S.C. § 1300j-7.)

[4] In public filings with the Securities and Exchange Commission, Station Casinos LLC lists SC Sonoma Development LLC as a subsidiary. (See, e.g., Station Casinos LLC Annual Form 10-K for 2012-2013 at Ex. 21.1, filed with the SEC on or about March 22, 2013 and available at http://www.sec.gov/Archives/edgar/data/1503579/000150357913000008/stationcasino12312012xex2.htm. (last accessed Feb. 25, 2014).) In addition, earlier Form 10 filings by Station

The Need for the Graton Indians to Acquire Jurisdiction

The National Indian Gaming Commission specifically pointed out the need for the Graton tribe to acquire jurisdiction over any property they might utilize to operate a casino. In the course of approving the tribe's non-site specific gaming ordinance in 2008 (which was eight years after the Graton Act and prior to the federal government's trust acquisition of the subject property), the NIGC chairman emphasized that "approval is granted for gaming *only* on Indian lands, as defined in IGRA, *over which the Graton Rancheria exercises jurisdiction.*" (4 JA 988 (emphasis added).)

Transfer to the Federal Government

In 2008, the federal Bureau of Indian Affairs (BIA) published notice in the Federal Register of its intention to accept title to the

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Casinos LLC discuss the company's plan to transfer the 254-acre parcel to the federal government so that the company could continue to work with the Graton tribe to create, develop, and eventually operate the casino at issue. (See, e.g., Form 10 filed by Station Casinos LLC with the SEC on or about Nov. 12, 2010 at p. A-23 (available at http://www.sec.gov/Archives/edgar/data/1503579/000110465910058173/a10-21092_11012g.htm (last accessed Feb. 25, 2014).) Such materials are subject to judicial notice pursuant to Evidence Code section 452(h); see also *Aquila, Inc. v. Super. Ct.* (2007) 148 Cal.App.4th 556, 566; *Stormed, Inc. v. Super. Ct.* (1999) 20 Cal.4th 449, 456-57 & n.9. Appellants are filing a Request for Judicial Notice along with this brief.

casino site in trust for the Graton Indians. (73 Fed.Reg. 25766 (May 7, 2008).) A short time thereafter, and in order to preserve their rights, certain of the appellants herein filed an action in federal court primarily seeking a declaration that after the transfer of title, the tribe would not have jurisdiction over the site. The district court did not reach the merits of the case but instead dismissed the action on the ground that use of the land as a casino was speculative and therefore the plaintiffs lacked standing. The Ninth Circuit affirmed. (See *Stop the Casino 101 Coalition v. Salazar* (9th Cir. 2010) 384 Fed. Appx. 546.)

On October 4, 2010, SC Sonoma Development LLC transferred *title* to the United States in trust for the Graton Indians. The grant deeds included an "acceptance of conveyance" whereby the United States "accept[ed] that grant of real property" pursuant to the Graton Act. (2 JA 475-496.)

No Cession of Jurisdiction

The Graton never pursued the separate constitutional and statutory procedure to obtain *jurisdiction* over the site. The State of California never ceded jurisdiction and, obviously, the federal government did not file a notice of acceptance of jurisdiction with the

Governor as required by 40 U.S.C. § 3112 (b). (See 5 JA 1136-1137 (the Governor's admission that there was no notice of acceptance of federal jurisdiction with respect to the subject property).) Significantly, the controlling statutes also include a conclusive presumption "that jurisdiction has not been accepted until the Government accepts jurisdiction over land as provided in this section." (40 U.S.C. § 3112(c).)

Compact Negotiations and Approval

Despite the fact that there has been no transfer of jurisdiction, the Governor assumed that preliminary legal requirements had been satisfied and proceeded to negotiate a compact with the Graton tribe for the purpose of allowing casino gambling on the site.[5] In March 2012, the Governor signed the compact. (1 JA 182.)

The Legislature quickly ratified the compact by means of Assembly Bill No. 517 (2 JA 361-363), which took effect just two

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[5] As noted *infra* (see p 23 & n. 13), the Graton Tribe's lack of jurisdiction makes the negotiation of a compact something that IGRA does not authorize. (See *Big Lagoon Rancheria v. California* (9th Cir. 2014) ___ F.3d ___, 2014 WL 211763 at *7 ("the only reasonable construction of § 2710(d)(3)(A) is that a tribe's right to request negotiations—and to sue if the state does not negotiate in good faith—depends on its having jurisdiction over Indians lands on which it proposes to conduct class III gaming.").)

months later, on May 17, 2012. The bill added a section to the California Government Code which states in pertinent part that "[t]he tribal-state gaming compact ... between the State of California and the Federated Indians of Graton Rancheria, executed on March 27, 2012, is hereby ratified." (Gov. Code § 12012.56(a).)

The compact in question allows the Graton tribe to operate up to 3,000 slot machines (referred to as "gaming devices") on the casino site (1 JA 87)—rivaling the biggest casinos located on or near the Las Vegas strip. (See Nevada Gaming Control Board http://www.gaming.nv.gov/documents/w...ts_4import.com (last accessed Feb. 25, 2014).)[6] In addition, the tribe can conduct an unlimited number of banked and percentage card games. (1 JA 86-87.)[7]

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[6] The Nevada Gaming Commission posts the slot machine numbers on its web site. Per those figures, it appears that the Graton casino is as large as many of the casinos in and about the Las Vegas Strip. Compare Mandalay Bay (1900 slots); MGM Grand (2200 slots), Mirage (2075 slots), Orleans (2704 slots), Red Rock (3010 slots). Santa Fe Station (2825 slots), Venetian (3050 slots) and Wynn (2800 slots).

[7] The entire compact (including appendices) is voluminous. It appears in the record at 1 JA 69 – 2 JA 315.

Trial Court Ruling

The trial court acknowledged that "[s]ince California was admitted into the Union in 1850, the Property was governed by the State of California and was never governed by the [Graton Indians] or any other Indians." (5 JA 1281.)

The trial court further acknowledged that neither the Graton Act nor California legislation ratifying the Compact purported to change that jurisdiction. The court's memorandum of decision states that "[The Graton Act] ... does not purport to alter California's sovereignty or jurisdiction over the property." It further declares: "Nothing in AB 517 or Government Code section 12012.56 [ratifying the compact] purports to cede sovereignty or jurisdiction over the Property to either the United States or to [the Graton Indians]." (5 JA 1281.)[8]

Nevertheless, the court ruled that the Graton Act established "all of the requisites necessary for the Property to be eligible for class III gaming under [IGRA] and the California Constitution." (5 JA

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[8] The Governor did not challenge the jurisdictional point in the trial court. (See Reporter's Transcript at page 26, lines 18-23; a copy of the transcript was also attached to Appellants' Notice Designating Record on Appeal (5 JA 1330:18-23).)

1292.) The court did not make clear whether it read IGRA to require tribal jurisdiction over the site. The court neither provided a definitive list of prerequisites under either IGRA or the California Constitution, nor did it specifically address the jurisdiction issue; indeed, the court never discussed whether or how the tribe gained jurisdiction over the site. The trial court did not dispute appellants' argument, but rather, simply ignored it.[9]

As we will now explain, the trial court erred on the jurisdiction issue. Prior to reviewing the rigors of jurisdiction, however, it is essential to understand the history of the longstanding ban on casino gambling in the state of California.

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[9] The trial court also erroneously characterized appellants' argument as requiring exclusive federal jurisdiction. But that was not the point at all, as appellants have argued from the beginning that no quantum of state jurisdiction can transfer without a cession by the state to the federal government; this aspect of the trial court's memorandum of decision, as well as other flaws in the analysis, are discussed further in Section IV, at pp. 52-59, *infra.*

ARGUMENT

I. INDIAN GAMING IS ALLOWED ONLY ON LANDS OVER WHICH THE TRIBE HAS JURISDICTION

A. Casino Gambling is Illegal in California

Casino gambling has been illegal in California since 1872, when Penal Code section 330 (prohibiting banking and percentage games) and section 319 (prohibiting lotteries) were enacted. After the invention of slot machines, those too were prohibited. (See Pen. Code §§ 330a, 330b, 330.1-330.4.)

In 1984, these prohibitions were elevated to the constitutional level with the enactment of Article IV, section 19(e) of the California Constitution, which provides in no uncertain terms that: "The Legislature has no power to authorize, and shall prohibit casinos of the type currently operating in Nevada and New Jersey."

B. Proposition 1A Provides a Narrow Exception Based on Federal Law

Fourteen years ago, the people passed Proposition 1A and thereby added a new clause to the state constitution. The new provision created a well-defined exception to the statewide ban on casino gambling. It authorizes the Governor to "negotiate and conclude compacts ... for the operation of slot machines and for the

conduct of lottery games and banking and percentage card games by federally recognized Indian tribes on Indian lands in California *in accordance with federal law*." (Cal. Const., Art. IV, § 19(f)(emphasis added).)

There is no question that the voters intended this new rule to be a narrow window for Nevada-style gambling in California. The voters were concerned about the undue spread of gambling casinos, particularly the threat that they would invade urban areas. The proponents of Proposition 1A stated that their intent was narrow as well, for they proclaimed that:

> Proposition 1A and federal law strictly limit Indian gaming to tribal land. The claim that casinos would be built anywhere is totally false.... The majority of Indian Tribes are located on remote reservations...

(Rebuttal to Argument Against Proposition 1A, contained in appellants' request for judicial notice, 2 JA 534.)[10]

However, as the facts of this case demonstrate, new tribes and their Nevada casino investors have chosen to expand the limits of

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[10] If there is ambiguity in the language of a ballot measure, "ballot summaries and arguments may be considered when determining the voters' intent and understanding of a ballot measure." (*Prof. Eng'rs in Calif. Gov't v. Kempton* (2007) 40 Cal.4th 1016, 1037 (citations omitted).)

Proposition 1A far beyond what proponents of the measure represented to voters.

C. IGRA Applies Only to Lands Over Which the Tribe Has Jurisdiction

The California Constitution permits tribes to conduct casino gaming only if permitted by federal law—and federal law, in turn, mandates that any tribe that desires to operate a casino ("Class III gaming" in the parlance of the governing statute[11]) must have jurisdiction over the land where the activity will take place. Thus, IGRA specifies that:

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[11] IGRA allows for three distinct types of Indian gaming: traditional tribal games (Class I) over which there is no regulation (see 25 U.S.C. § 2703(6)); bingo and various card games played elsewhere in the state (Class II) over which there is certain specific regulation (see 25 U.S.C. § 2703(7)); and full-blown casino gaming (Class III, which is at issue in this case) over which Congress has mandated extensive regulation and jurisdictional requirements (see 25 U.S.C. § 2703(8)). For a discussion of the history of the IGRA statute and California's regulation of gaming under it see *Artichoke Joe's v. Norton* (9th Cir. 2003) 353 F.3d 712, 714-719. We hasten to note that even though the Ninth Circuit upheld a tribal monopoly over Class III gaming in California on equal protection grounds (see 353 F.3d at 741-742), the court did not decide the issue presented in the instant case: whether casino gaming under IGRA is permissible on land specifically acquired for gambling, as opposed to traditional tribal land. (See 353 F.3d at 735 & n.16 ("we need not and do not decide whether lands that are purchased specifically for the purpose of conducting class III gaming activities are 'Indian lands' within the meaning of IGRA.").)

> 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*....

(See 25 U.S.C. § 2710(d)(1)(A)(i)(emphasis added).)

The reference to jurisdiction in IGRA was by no means inadvertent, for it is repeated multiple times within the governing statutory scheme. (See, e.g., 25 U.S.C. § 2710(d)(3)(A)("Any Indian tribe having jurisdiction over the Indian lands upon which a class III gaming activity is being conducted ... shall request the State...to enter into negotiations for ...a Tribal-State compact...."); see also 25 U.S.C. § 2710(d)(7)(B)(iv) (referring to "Indian lands subject to the jurisdiction of such Indian tribe"); and 25 U.S.C. § 2710(d)(7)(B)(vii)(II) (referring to Class III gaming being conducted "on the Indian lands over which the Indian tribe has jurisdiction").)[12]

The Ninth Circuit recently noted the importance of IGRA's jurisdiction requirement in the course of discussing the state's obligation to enter negotiations for a Class III gambling compact.

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[12] Tribal jurisdiction is also required for Class II gaming. (See, e.g., 25 U.S.C. § 2710(b)(1); § 2710(b)(2); and § 2701 (b)(4)(A).)

(See *Big Lagoon Rancheria v. California* (9th Cir. 2014) ___ F.3d ___, 2014 WL 211765 at *7 ("In sum, the only reasonable construction of [25 U.S.C.] § 2710(d)(3)(A) is that a tribe's right to request negotiations—and to sue if the state does not negotiate in good faith—depends on its having jurisdiction over Indians lands on which it proposes to conduct class III gaming.").)[13]

The limitation to lands under tribal jurisdiction makes perfect sense. IGRA was passed in order to fill a regulatory void left by the Supreme Court's ruling in *California v. Cabazon Band of Mission Indians* (1987) 480 U.S. 202.[14] The issue in *Cabazon* was whether California's prohibition against bingo was criminal (prohibitory) or

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[13] In the *Big Lagoon* case, the court noted that because the land had not been properly acquired by the Bureau of Indian Affairs, there was no land over which the tribe had jurisdiction and, therefore, no obligation on the part of the state to commence or participate in IGRA negotiations. The court specifically observed that "a predicate to the right to request negotiations under the IGRA is jurisdiction over the Indian lands upon which a tribe proposes to conduct class III gaming." *Big Lagoon Rancheria v. California*, *supra*, 2014 WL 211763 at *13.

[14] The Supreme Court noted the historical Indian character of the lands involved in the *Cabazon* case. The Cabazon Reservation was set apart for the permanent use and occupancy of the Cabazon Indians by Executive Order of May 15, 1876. The Morongo Reservation was also first established by Executive Order in 1877. (2 JA 810, 816.) In 1891, Congress set aside these reservations "for the sole use and benefit" of the Cabazon and Morongo Bands. (*Cabazon, supra,* 480 U.S. at 204 & n.1.)

civil (regulatory) as applied to Indian tribes. The Court held the prohibition was civil and thus did not govern the Indians. (480 U.S. at 209-212.) The federal government did not govern bingo on Indian lands either, and thus there was a regulatory gap in *Cabazon's* wake: there was no federal or the state regulatory oversight over this activity. IGRA was passed the following year to fill the vacuum. (Franklin Ducheneaux, The Indian Gaming Regulatory Act: Background & Legislative History, 42 Ariz .St.L. J. 99 (Spring 2010).) IGRA's *raison d'etre* was to regulate gaming on lands not governed by state law. Hence IGRA is limited to lands over which tribes have jurisdiction.

Thus a pivotal question when considering the legality of any tribal casino gambling in California is whether the tribe in question has legislative jurisdiction over the land it seeks to utilize as the site of a Nevada-style casino. And when we examine the time-honored principles of jurisdiction in this case, it becomes abundantly clear that the Graton Tribe does *not* have jurisdiction over the casino site. Indeed, abundant and respected legal authority establishes that California's border-to-border sovereignty (see Gov. Code § 110) does not dissipate, abate or transfer unless and until the state's jurisdiction

is formally ceded to another governmental authority—and California has not done so in this case.

II. THE GRATON INDIANS DO NOT HAVE JURISDICTION OVER THE CASINO SITE

A. The Interplay Between Federal and State Jurisdiction

The United States Constitution establishes a system of divided sovereignty between the states and the federal government. As has oft been stated, the federal government is a government of limited powers. All powers not delegated to the federal government or prohibited to the states are retained by the states. (U.S. Const., Amend. X; see also *Gregory v. Ashcroft* (1991) 501 U.S. 452, 457-458.) As James Madison put it:

> The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite. . . . The powers reserved to the several States will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State.

(The Federalist, No. 45, pp. 292-293 (Rossiter ed. 1961).)

This is the basis for California's police power, which includes the authority to prohibit or regulate gambling within the state's borders. Thus, California statutory law provides that "[t]he

sovereignty and jurisdiction of this State extends to all places within its boundaries as established by the constitution." (Gov. Code § 110.)

This case raises the question of whether state jurisdiction over federal lands, specifically Indian trust lands, is different. As we discuss below, the state retains legislative jurisdiction over federal lands and the federal government holds a mere proprietary interest unless the state affirmatively cedes its jurisdiction. (See pp. 31-39, *infra.*) Contrary to popular assumptions, these principles apply to Indian lands the same as to non-Indian lands. (See pp. 39-46, *infra.*)

B. Different Types of Jurisdiction

There are several different jurisdictional scenarios, but each still requires a cession from the state to another sovereign.

Exclusive jurisdiction is the broadest and most extensive shift possible. It occurs when the federal government "theoretically displaces the state .... of all its sovereign authority" over the site. (*People v. Crusilla* (1999) 77 Cal.App.4th 141, 148.) However, that situation is extremely rare; all authorities agree that although the term is still used to describe federal jurisdiction over sites within state borders "there is no such thing as exclusive jurisdiction outside of the

District of Columbia." (Haines, *Federal Enclave Law*, Ch. 2, p. 32 (Atlas Books 2011).)

Partial jurisdiction is a similar concept. It is where "the state has granted the federal government certain aspects of the state's authority, but where the state has reserved for itself either the exclusive or concurrent authority to do an act going beyond the minimal standard of serving civil or criminal process in the area (for example, the right to tax private property)." (See *Crusilla, supra,* 77 Cal.App.4th at 148.)

Concurrent jurisdiction is more common. It exists when "a state has granted the federal government authority that would otherwise amount to exclusive legislative jurisdiction over an area, but the state has reserved to itself the right to exercise, concurrently with the federal government, all the same authority." (*Id.*) If there is concurrent jurisdiction, the federal government gets additional powers, but does not completely displace state jurisdiction.

In those cases where the federal government has not obtained any cession of the state's authority, the United States has only a proprietorial interest in the property. (*Id.*; see also, Jurisdiction Over Federal Areas Within the States (Gov't Printing Office (1956)), Part I,

at pp. 13-14 (available at http://www.constitution.org/juris/fjur/1fj1-3.htm (last accessed Feb. 25, 2014).)

C. Title and Sovereignty are Two Different Aspects of Dominion Over Land

A vital principle at the core of the foregoing discussion is that the acquisition of title and the acquisition of sovereignty are two completely different things. As every pertinent authority notes, the process by which the federal government acquires title is separate and apart from the process by which the federal government acquires jurisdiction.

The federal government itself acknowledges this reality. A recent guide published by the General Accounting Office reads:

> Almost all federally owned land is within the boundaries of one of the 50 states. This leads logically to the question: who controls what? When we talk about jurisdiction over federal land, we are talking about the federal-state relationship. The first point is that, whether the United States has acquired real property voluntarily (purchase, donation) or involuntarily (condemnation), the mere fact of federal ownership does not withdraw the land from the jurisdiction of the state in which it is located. ... *Acquisition of land and acquisition of federal jurisdiction over that land are two different things.*

(*Principles of Federal Appropriations Law* (Ofc. the General Counsel, U.S. Gov. Acctg. Ofc., 3rd Ed. (2008), Vol. III, Ch. 13 at 13-

101(emphasis added and citations omitted)(available at http://www.gao.gov/special.pubs/d08978sp.pdf (last accessed Feb. 25, 2014).) In the case at bar, although the federal government clearly acquired title to the casino site when the Nevada casino developer transferred title to the property, it merely acquired ownership rights; it did not acquire legislative jurisdiction. As we explain immediately below, for there to be a jurisdictional transfer, a formal cession from the state is required.

D. There Are Only Three Ways for the Federal Government, and Through It an Indian Tribe, to Acquire Jurisdiction Over Land Within the State. None of Them Has Occurred With Respect to the Graton Casino Site.

The law on federal and state jurisdiction has long been settled. There are three basic ways the federal government, and through it an Indian tribe, can obtain legislative jurisdiction over lands within a state's borders. They are:

(1) reservation of jurisdiction on state admission,
(2) state consent upon subsequent purchase by the federal government; or
(3) state cession at any time thereafter.

(See generally, *Coso Energy Developers v. County of Inyo* (2004) 122 Cal.App.4th 1512, 1520.)[15]

The first method is for the federal government to reserve jurisdiction over certain parcels to itself on admission of the state. (*Fort Leavenworth Railroad Co. v. Lowe* (1885) 114 U.S. 525, 526-527.) This is the method that has usually been applicable to Indian lands, but it is inapplicable in this case because the land in question was not "reserved out" when California was admitted to the Union. (See 2 JA 504-506 (admission statute).)

The second method involves the acquisition of jurisdiction by way of a post-admission purchase of land by the United States pursuant to the Enclaves Clause of the federal constitution. That clause provides that Congress shall have the power:

> [t]o exercise exclusive Legislation in all Cases whatsoever, over [the District of Columbia], and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings....

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[15] The court below claimed that *Coso* was not on point because it did not pertain to Indian lands. (5 JA 1289.) The *Coso* case explains the only methods by which the federal government can obtain jurisdiction over lands within a state, regardless of the factual context. In section G below (pp. 39-46, *infra)*, we explain the application of these methods to Indian lands.

(U.S. Const., Art. I, § 8, cl. 17.)

The Graton casino site was not acquired pursuant to the Enclaves Clause so this method also has no application here, nor have appellants ever asserted that the Enclaves Clause governs this case.

The third method—and, we submit, the only one that could possibly govern this case—is cession of jurisdiction by the state and acceptance by the federal government. (See *Fort Leavenworth, supra,* 114 U.S. at 539[16]; Gov. Code §110; 40 U.S.C. § 3112.) But as explained above, there was no cession with respect to the subject property.

Legal authorities all concur that these are the *only* three methods by which the federal government can obtain jurisdiction over state lands.[17] Most importantly for our purposes, California courts

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[16] *Ft. Leavenworth* was a tax case in which a railroad company challenged a tax imposed by the State of Kansas on the ground that the land in question (a military reservation) was not subject to state jurisdiction. The United States Supreme Court concluded that there had been no transfer of exclusive jurisdiction to the federal government and therefore the tax was upheld. (114 U.S. at 542.)

[17] In the court below, appellants introduced testimony from James Frey, a retired staff attorney for the California State Lands Commission, which is the state agency that tracks instances in which the state has ceded jurisdiction to the federal government. (See Gov.

have repeatedly stated that these three methods are the exclusive protocol for the federal government to obtain jurisdiction over lands within the state's borders. (See *Coso Energy Developers v. County of Inyo, supra,* 122 Cal.App.4th 1512, 1520; *People v. Crusilla, supra,* 77 Cal.App.4th 141, 148; *People v. Mouse* (1928) 203 Cal. 782, 784.) It is ironic indeed that the Attorney General, who here is seeking to avoid these legal principles, was the very party asserting them on behalf of the state in all three of the cited cases.

A core component of this jurisdictional structure is that jurisdiction cannot be transferred by implication. As the governing statutes make clear, there must be an express cession by the state (see Gov. Code §110), as well as a formal acceptance of jurisdiction by the federal government (40 U.S.C. § 3112).

Moreover, it is well established that any statute purporting to cede any portion of the State's legislative jurisdiction will be strictly construed in favor of the State, and further that the "language in which

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Code § 127.) Mr. Frey, who had previously testified as an expert in the *Coso* case, testified here as the "person most knowledgeable" to speak on behalf of the Commission. He confirmed that the foregoing three methods were the only ways for the state to transfer its legislative sovereignty to the United States government. (5 JA 1125-1126.)

the surrender is made [must be] clear and unmistakable." (*Coso Energy Developers v. County of Inyo, supra,* 122 Cal.App.4th at 1533 (quoting *Standard Oil v. Johnson* (1938) 10 Cal.2d 758, 767).) As the California Supreme Court noted in *People v. Centr-O-Mart* (1950) 34 Cal.2d 702, 703-704 (citations omitted):

> The universal rule is that "laws in derogation of sovereignty are construed strictly in favor of the state and are not permitted to divest it or its government of any prerogatives, unless intention to effect that object is clearly expressed." A statute will not be construed to impair or limit the sovereign power of the state to act in its governmental capacity and perform its governmental functions in behalf of the public in general, unless such intent clearly appears.

These authorities preclude any consideration of a judicially created doctrine of "implied cession." Indeed an assertion that the legislative approval of a gambling compact implicitly transferred jurisdiction flies in the face of these rules and the foregoing principles.

i. Out-of-State Authority Squarely Supports Appellants' Analysis of Jurisdiction

California authority is in step with that of other states. As out-of-state appellate courts have noted, unless the land was reserved upon the state's admission, or acquired in compliance with the Enclaves Clause, or jurisdiction was formally ceded, there is no

change in a state's authority to control land within its borders. (See *Wagner v. Montana* (1995) 270 Mont. 26, 889 P.2d 1189 (Montana had jurisdiction to enforce its drug laws over national forest land owned by federal government); *Arizona v. Galvan-Cardenas* (1990) 165 Ariz. 399; 199 P.2d 19 (Arizona had concurrent jurisdiction over federal lands used as port of entry); *Arizona v. Vaughn* (App. 1989) 163 Ariz. 200, 786 P.2d 1051 (Arizona had jurisdiction to enforce criminal laws over federal military base); *Totemoff v. Alaska* (Ak.1995) 905 P.2d 954 (Alaska game laws applied on federal land); *Oklahoma v. Cline* (Ok. Cr. Ct. App. 1958) 322 P.2d 208 (Oklahoma had jurisdiction over federally owned wildlife refuge).)

ii. Federal Decisions Also Confirm that Appellants Are Correct on the Jurisdiction Issue

Federal decisions are to the same effect. (See *Williams v. Arlington Hotel Co.* (8th Cir. 1927) 22 F.2d 669, 670 (discussing the three methods); *Rogers v. Squier* (9th Cir. 1946) 157 F.2d 948, 949 ("[Utah's] enabling act contained no provision retaining jurisdiction in the United States over this reservation. Accordingly federal jurisdiction exists only if it has been ceded by the state."); *Arizona v. Manypenny* (D. Ariz. 1977) 445 F.Supp. 1123, 1125-1127 (court recognized only three methods to shift jurisdiction: the Enclaves

Clause; reservation upon a state's admission; and formal cession of jurisdiction); *Koren v. Martin Marietta Services, Inc.* (D. P.R. 1998) 997 F.Supp. 196; *Kelly v. Lockheed Martin Services* (D. P.R. 1998) 25 F.Supp.2d 1.)

iii. Learned Studies Provide Further Support for Appellants' Position

In addition, authoritative writings on the subject echo these rules. In the *Crusilla* case cited above, the court relied on a monumental report published in 1957 by the Eisenhower administration. (77 Cal.App. 4th at 148.) That report included an extensive discussion of basic jurisdictional principles. After discussing the three methods of acquiring federal jurisdiction listed above, the report concluded:

> It scarcely needs to be said that unless there has been a transfer of jurisdiction (1) pursuant to clause 17 by a Federal acquisition of land with State consent, or (2) by cession from the State to the Federal government, or unless the Federal Government has reserved jurisdiction upon the admission of the State, the Federal Government possesses no legislative jurisdiction over any area within a State, such jurisdiction being for exercise entirely by the State, subject to non-interference by the State with Federal functions and subject to the free exercise by the Federal Government of rights with respect to the use, protection, and disposition of its property.

(*Jurisdiction Over Federal Areas Within the States: Report of the Interdepartmental Committee for the Study of Jurisdiction Over Federal Areas Within the States* (June 1957) at Part II, pp. 45-46; the full report is available at http://www.constitution.org/juris/fjur/fedjurisreport.pdf; (hereinafter "1957 Report.") (last accessed Feb. 25, 2014).)[18]

E. The Federal Government Cannot Unilaterally Divest California Jurisdiction Over Land Within the State's Borders

One of the important principles arising out of the foregoing discussion is that the federal government cannot unilaterally oust the state of jurisdiction. That is why the 1957 Report states:

> The Federal Government cannot, by unilateral action on its part, acquire legislative jurisdiction over any area within the exterior boundaries of a State.

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[18] Accord: *Principles of Federal Appropriations Law* (Ofc. the General Counsel, U.S. Gov. Acctg. Ofc., 3rd Ed. (2008), Vol. III, p. 13-116 (available at http://www.gao.gov/special.pubs/d08978sp.pdf) (last accessed Feb. 25, 2014); ("For the land over which the United States has not obtained exclusive, partial, or concurrent jurisdiction by consent or cession, federal jurisdiction is said to be 'proprietorial.'"); see also, Edmund G. Brown & Herbert E. Wenig, *Jurisdiction over Federal Enclaves in California*, at p. 90 (Sept. 1958) (5 JA 1169.)

(1957 Report, *supra*, at p. 46; 5 JA 1158.) This rule is necessary to preserve the integrity of the states. (*Id.*)

All of the foregoing authority confirms that the transfer of legislative jurisdiction from one sovereign to another is based on consent – that of the state to formally cede jurisdiction, and of the federal government to formally accept it. The assertion that the federal government can take title to land anywhere in a state, and unilaterally allow an Indian tribe to conduct activity that is illegal under state law – effectively ousting the state from jurisdiction – is completely contrary to these fundamental legal principles. There is no authority—be it a case, a statute, or a constitutional provision—that allows the federal government to obtain legal title to property and by that act alone supplant state legislative jurisdiction (and thereby the state's police power) over land within its borders.

F. A Transfer of Jurisdiction From the State is Not Complete Unless and Until the Federal Government Accepts the New Jurisdiction

Congress has enacted specific statutes to govern the process of acquiring jurisdiction over state lands. A formal cession of jurisdiction by a state is only half of the process. The other half

involves the federal government's formal acceptance of jurisdiction.

Hence, the governing federal statute provides in pertinent part:

> When the head of a department, agency, or independent establishment of the Government...considers it desirable, that individual may accept or secure, from the State ....consent to, or cession of, any jurisdiction over the land or interest not previously obtained.

(40 U.S.C. § 3112(b).)

If a cession is made by the state in question,

> [t]he individual [federal official] shall indicate acceptance of jurisdiction on behalf of the Government by filing a notice of acceptance with the Governor of the State or in another manner prescribed by the laws of the State where the land is situated.

(*Id.*)

Most importantly, the federal statute contains a conclusive presumption:

> It is conclusively presumed that jurisdiction has not been accepted until the Government accepts jurisdiction over land as provided in this section.

(40 U.S.C. § 3112(c).)

Thus, absent a showing of acceptance of jurisdiction, state courts must assume that the land is still under state jurisdiction.

(*Johnson v. Morrill* (1942) 20 Cal.2d 446, 453-454; *People v. Brown* (1945) 69 Cal.App.2d 602, 605-606; see also *Adams v. United States*

(1943) 319 U.S. 312 (federal government had no jurisdiction to prosecute 1941 rape at military base because Secretary of War did not accept jurisdiction over the land in question).)

In this case, as noted, there has been no cession of jurisdiction. Needless to say, there has been no formal acceptance of jurisdiction either. (5 JA 1136-1137 (Governor's response to request for admissions).)

G. The Core Jurisdiction Principles Apply to Indian Lands

i. Reservation Upon Admission

Most Indian reservations were established before the state in which they sit was admitted into the Union, and the states therefore took jurisdiction subject to the pre-existing jurisdiction of those recognized Indian tribes. A number of state admission acts and/or state Constitutions explicitly reserve jurisdiction over Indian lands to the federal government, including Washington (25 Stat. 676); Idaho (12 Stat. 808; Idaho Const., Art. XXI, Sec. 19); Wyoming (Wy. Const., Art. 21, Sec 26); Utah (28 Stat. 107); Oklahoma (43 Stat. 267); New Mexico and Arizona (36 Stat. 557); and Alaska (Alaska Const. Art. 12, sec. 12-12).

Many courts have analyzed jurisdictional disputes over Indian lands based on reservations in admission acts. (See *In re Kansas Indians (Blue Jacket v. Johnson County)* (1867) 72 U.S. 737 (holding that Indians were exempt from state property taxes because Kansas accepted admission into union on condition that Indian rights would remain unimpaired); *Ex Parte Sloan* (D. Nev. 1877) 22 F. Cas. 324 (federal government had no jurisdiction over murder on Indian reservation because U.S. did not reserve jurisdiction when Nevada admitted to statehood); *United States v. Sutton* (1909) 215 U.S. 291 (holding that federal government could enforce liquor ban on Indian reservation in Washington State due to state's consent at admission to jurisdiction of Congress until Indian title was extinguished); compare *Organized Village of Kake v. Egan* (1962) 369 U.S. 60 (Alaska could enforce anti-fish-trap law on Indian reservation over which federal government did not reserve jurisdiction on state's admission) with *Metlakatla Indian Community v. Egan* (1962) 369 U.S. 45 (Alaska lacked jurisdiction to enforce anti-fish-trap laws over Indian reservation over which the federal government did reserve jurisdiction at time of state's admission).)

ii. Cession of Jurisdiction

Where Indian lands are not reserved on admission of the state, a formal cession of jurisdiction is necessary before either the federal government or a tribe may rightfully exercise derivative legislative jurisdiction over a given site. For example, in *Wisconsin v. Shepard* (1941) 239 Wis. 345, 300 N.W. 905, the Supreme Court of Wisconsin held that the state had jurisdiction to enforce game laws on Indian trust lands acquired by the federal government without state consent.

> The acquiring of land for federal purposes does not oust state jurisdiction in matters pertaining to state authority...To vest jurisdiction in the United States even of lands in Indian country within a state a cession of such jurisdiction by the State is essential.

(300 N.W. 907.)

The Wisconsin Supreme Court relied on a then-recent decision of the United States Supreme Court: *Silas Mason Co. v. Tax Commission of Washington* (1937) 302 U.S. 186. In that case, the federal government undertook construction of the Grand Coulee Dam, and the state of Washington sought to impose a gross receipts tax on the contractors. Several of the contractors sued, claiming that the state lacked jurisdiction over the federal lands where they had been working.

The Court separately analyzed lands obtained from different sources—lands acquired by the United States from the state itself; land acquired by the United States from individual owners by purchase or condemnation; and Indian lands. (See 302 U.S. at 198-203 (lands acquired from the state); 302 U.S. at 203-209 (land acquired by condemnation) and 302 U.S. at 209-210 (Indian tribal lands).) The Court first noted that acquisition of title does not equate with the acquisition of jurisdiction, and stated that:

> It must appear that the State, by consent or cession, has transferred to the United States that residuum of jurisdiction which otherwise it would be free to exercise.

(302 U.S. at 197.)

iii. The Analysis Articulated in the *Silas Mason* Case Applies Here

We submit that *Silas Mason* is right on point. However, in the court below, the trial judge summarily dismissed appellants' complaint on the grounds that it "dealt with the federal government having 'exclusive jurisdiction' over federal land." (See 5 JA 1262.) As discussed above, *supra* page 26-27, the pertinent authorities agree that the federal government must gain consent for a transfer of "partial" or "concurrent" jurisdiction, the same as when the United

States seeks to acquire exclusive jurisdiction. (See, e.g., *People v. Crusilla, supra*, 77 Cal.App.4th at 141, 148-149.)

It is worth noting that the *Silas Mason* decision is based on *Surplus Trading Co. v. Cook*, 281 U.S. 647 (1930), a case in which the high Court engaged in a much fuller discussion of the tribal jurisdictional issue.

The Court observed in the *Surplus Trading Company* case:

> "It is not unusual for the United States to own within a state lands which are set apart and used for public purposes. Such ownership and use without more do not withdraw the lands from the jurisdiction of the state. On the contrary the lands remain part of her territory and within the operation of her laws, save that the latter cannot affect the title of the United State or embarrass it in using the lands or interfere with its right of disposal.
>
> A typical illustration is found in the usual Indian reservation set apart within a state as a place where the United States may care for its Indian wards and lead them into habits and ways of civilized life. Such reservations are part of the state within which they lie and her laws, civil and criminal, have the same force therein as elsewhere within her limits, save that they can have only restricted application to the Indian wards. ... Another illustration is found in two classes of military reservations within a state–one where the reservation, although established before the State is admitted into the Union, is not excepted from her jurisdiction at the time of her admission; and the other where the reservation, although established after the admission of the state, is established either upon lands set apart by the United States from its public domain or upon lands purchased by it for the purpose without the consent of the Legislature

> of the state. *In either case, unless there be a later and affirmative cession of jurisdiction by the state, the reservation is a part of her territory and within the field of operation of her laws, save that they can have no operation which would impair the effective use of the reservation for the purpose for which it is maintained.*"

(*Surplus Trading Co. v. Cook, supra*, 281 U.S. at 650-651 (emphasis added).)

iv. California Authority With Respect to Tribal Jurisdiction

The same point was made almost a century ago by a California district court judge. In *United States v. Lewis* (S.D. Cal. 1918) 253 F. 469, the court sustained defendant's demurrer due to the fact that despite federal title to the Indian land, the state still had jurisdiction over it. The court wrote:

> There are many acts of the Legislature of California ceding jurisdiction to the United States over certain specified territories, such as Indian reservations, military reservations...but there is none ceding jurisdiction to the United States over land such as is described in this indictment.

(253 F. at 473.)[19]

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[19] The federal government has also acknowledged that the jurisdictional rules reviewed above apply to Indian lands. In 1912, an Indian school in Mendocino County run by the federal government was burglarized, and when the offender was caught, the local BIA superintendent wrote to the Office of Indian Affairs in Washington, D.C. for instructions about who should handle the matter. The office

But the ultimate concession comes from the California Attorney General's office itself, which has expressly acknowledged not only that these principles apply with full force to Indian lands within the state, but that unfortunately courts have misinterpreted the rules due to the federal government's exclusive power over tribal Indians. Thus, a generation ago then-Attorney General Edmund G. Brown and his co-author, Herbert E. Wenig, concluded:

> "*Finally, it is appropriate to note the problem concerning Indian lands within this State.* As a matter of legal theory, the same rules apply to Indian lands as apply to other holdings of the Federal government. Unfortunately, the power of the Federal government to exercise

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wrote back that state authorities still had jurisdiction over the site. The letter signed by the Assistant Commissioner reads:

> Inasmuch as the lands occupied by these Indians were purchased from private individuals while same were under the jurisdiction of the State of California, said jurisdiction would continue until such a time as the State ceded its police jurisdiction.

(1 JA 53.)

Moreover, the National Indian Gaming Commission acknowledged that the Graton Tribe would have to acquire jurisdiction over the subject property prior to commencing casino operations there. (See discussion, *supra* at p. 13; 4 JA 988.)

> exclusive control over Indians themselves has led our courts into somewhat erroneous analysis of the problem.
>
> There is a tendency to confuse exclusive jurisdiction over lands owned by the Federal government and used as Indian reservations with the exclusive right of the Federal government to legislate on Indian matters. [Citation omitted.] Absent this error, *Indian lands owned by the Federal government are no different than any other lands so owned. Jurisdiction depends on the manner of acquisition and the grants of cession or terms of consent statutes."*

(Edmund G. Brown & Herbert E. Wenig, "Jurisdiction over Federal Enclaves in California," at pp. 89-90 (Sept. 1958) (5 JA 1168-1169), emphasis added.)[20]

H. California Has Not Ceded Any Jurisdiction Over the Casino Site to the Federal Government, nor Has the Federal Government Accepted Jurisdiction

In this case, the federal government did not reserve jurisdiction over the casino site upon California's admission to the Union. Rather, the land was privately owned and governed by state law from 1850 until 2010, when SC Sonoma Development LLC, a subsidiary of Stations Casino LLC, transferred title to the federal government so the

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[20] This analysis was cited repeatedly by the *Coso* court. (See 122 Cal.App.4th at 1522 & n. 4 and 1530 & n. 9.) Moreover, the cession procedure has been followed in the case of a California Indian tribe. Specifically, in 1911, the state ceded jurisdiction with respect to land in Riverside County occupied by the Saboba Indians. (See Cal. Statutes of 1911 at Ch. 675 (see 1 JA 63-64).)

land could be placed in trust for the Graton Tribe. However, no transfer of jurisdiction was ever granted by the state, nor was any requested—much less accepted—by the United States. As confirmed by the court below, California has not ceded jurisdiction over the property. (5 JA 1281.) Therefore, the federal interest is proprietorial only; the federal government has not obtained the state's legislative jurisdiction over the land.

I. The Graton Situation Is Unique

The Graton situation is different from that of the vast majority of Indian tribes in California. This case involves land in an urban area that was not an Indian reservation when the state was formed or at any time prior to 2010. The instant transaction whereby the federal government acquired title was financed by a Nevada casino operator who arranged a partnership with the Graton Indians for the sole purpose of circumventing state laws that would otherwise bar the Nevada entity from opening a casino here.

There is no evidence in the record that the land in question will be used for residential purposes or for traditional means of support such as hunting, fishing, gathering and agriculture. Rather, the land will be used exclusively to conduct a business that is illegal on lands

governed by state law. Doing so stretches tribal sovereignty beyond precedent. (See, e.g., *Washington v. Confederated Tribes of Colville Reservation* (1980) 447 U.S. 134, 155 ("We do not believe that principles of federal Indian law, whether stated in terms of preemption, tribal self-government, or otherwise, authorize Indian tribes thus to market an exemption from state taxation to persons who would normally do their business elsewhere.").)

Most Indian casinos are on lands that have long been held by the Indians, and over which the tribes have long exercised governmental sovereignty. (See *California v. Cabazon Band of Mission Indians*, *supra*, 480 US 202, 204 & n.1.) For tribes occupying lands held continuously since the state's admission, the lands would likely be treated as reserved on admission, should the question of jurisdiction be raised.

Even if there was no compliance with the three legal methods for transfer of jurisdiction, there is judicial authority for applying equitable doctrines to prevent the state from asserting jurisdiction over long-standing Indian reservations. Courts have invoked doctrines of laches, acquiescence, and impossibility against tribes repurchasing long-abandoned reservation lands and reasserting jurisdiction over

such lands. In *City of Sherrill v. Oneida Indian Nation* (2005) 544 U.S. 197, the court held that re-establishment of Indian jurisdiction over long-abandoned lands would disturb the settled expectations of occupants of the area.

Those same equitable doctrines should work both ways and protect reservations where Indian tribes have long-exercised historic sovereignty. We do not mention this point because this aspect of the analysis is presently at issue, but rather, to assure the court that the result appellants seek need not disturb the longstanding reservations that exist in California.

III. THE GRATON ACT DID NOT, AND COULD NOT, SATISFY THE JURISDICTION REQUIREMENT

The trial court held that the Graton Act satisfied the "requisites" for a tribal-state gaming compact. (5 JA 1292.) The trial court did not specifically discuss the jurisdiction issue, nor did it opine that the Graton Act somehow conferred jurisdiction on the tribe. Both of those approaches would have been incorrect in any event, as explained above.

The question remains: what significance did the Graton Act have? The answer is that the statute recognized the tribe. It must be noted that recognition is not an automatic transfer of California's

sovereignty; rather, it signifies recognition of the Graton Indians' eligibility for federal benefits. (See 25 U.S.C. §1300n-2(c); see also 25 U.S.C. § 479-1a ("The Secretary shall publish in the Federal Register a list of all Indian tribes which the Secretary *recognizes to be eligible for the special programs and services* provided by the United States to Indians because of their status as Indians." (Emphasis added).) Given that recognition occurred in December 2000, ten years before the Graton Tribe had any land, it could not mean recognition of sovereignty over land, much less this particular land.

The Graton Act required the Secretary to accept title to land in trust for the Graton Tribe. 25 U.S.C. § 1300n-3(a). However, "[a]cquisition of land and acquisition of federal jurisdiction over that land are two different things." (*Principles of Federal Appropriations Law* (Ofc. the General Counsel, U.S. Gov. Acctg. Ofc., 3rd Ed. (2008), Vol. III at p. 13-101 (available at http://www.gao.gov/special.pubs/d08978sp.pdf) (last accessed Feb. 25, 2014).)

The Graton Act also designated a future site to be taken into trust as a "reservation" (25 U.S.C. § 1300n-3(c)), but again, such a designation does not confer sovereignty on the tribe. The term "reservation" traditionally has referred to lands withdrawn from the

public domain and unavailable for settlement. These are lands reserved "for a particular purpose, such as an Indian reservation or a national forest or a national park or monument." *Shoshone-Bannock Tribes v. Reno*, 56 F.3d 1476, 1479 (D.C. Cir. 1995). The designation concerns use of the land, not title to it or jurisdiction over it. (See 25 CFR 81.1 ("Reservation means any area established by treaty, Congressional Act, Executive Order, or otherwise for the use or occupancy of Indians.") (Emphasis added).) The Graton Act says nothing about jurisdiction.

Although the Graton Act exempts the property from state taxation, that portion of the statute is irrelevant here, for it does not grant sovereignty over the casino site to the Graton Indians, nor does it make the Tribe eligible for a gaming compact. In order for the Tribe to meet the jurisdictional requirements of IGRA there must be a cession of jurisdiction by the State of California—which has not occurred.

Lastly, we note the trial court's determination that casino gambling was allowed on the Graton site because of IGRA's so-called "restored lands" exception. Specifically, the court below determined that under 25 U.S.C. section 2719(b), the Graton Tribe qualified for

Class III gaming because the subject property was land taken into trust after 1988 for a restored tribe. (5 JA 1286.) But that conclusion was further evidence of error by the court because section 2719(b) is an exception to the general prohibition in section 2719(a) against gaming on lands acquired after 1988; it is *not* an exemption from the basic IGRA limitation that gaming is restricted to land under tribal jurisdiction (see 25 U.S.C. § 2701(d)(1)(A)). There is no statutory exception to that requirement.

In sum, none of the provisions in the Graton Act and none of the actions by the Secretary of the Interior; the NIGC; the California Legislature; or the Governor fulfill the one requirement at issue in this litigation, namely, that the Graton Tribe must have jurisdiction over the casino site.

IV. NEITHER THE DECISION IN *CITY OF ROSEVILLE v. NORTON*, NOR PUBLIC LAW 280 OR THE *CABAZON* CASE, ADDRESS APPELLANTS' JURISDICTION ISSUE

The trial court's memorandum of decision utterly fails to deal with the jurisdiction issue raised by appellants. Indeed, given the finding by the court below that the approval of the Graton compact did not shift jurisdiction (see 5 JA 1281), there is no need to proceed

further, for the Graton Tribe cannot even request negotiation of a compact unless and until it acquires jurisdiction over the property.

With all due respect, the trial court's ruling dances around the jurisdiction issue in several respects. First, the court erred in relying upon *City of Roseville v. Norton* (D.D.C. 2001) 219 F.Supp.2d 130, and in branding appellants' jurisdiction argument an "enclaves theory." In addition, the court's references to the *Cabazon* case and Public Law 280 do not resolve the core jurisdiction question at issue here. We explain each of these points in the discussion that follows.

A. The Decision in *City of Roseville* Did Not Consider the Effect of a Change in Title on State's Sovereign Jurisdiction

In ruling on the parties' motions for summary judgment, the trial court relied in part on *City of Roseville v. Norton* (D.D.C. 2001) 219 F.Supp.2d 130, a case in which two California cities (joined by a community citizens group) challenged the federal government's decision to accept land in trust for a tribe. According to the trial court, *City of Roseville* involved "a legal and factual setting nearly identical to this case." (5 JA 1290.) The court specifically noted that *City of Roseville* "negates [appellants]' claim that the Property on which the

Tribe is building its casino must be ceded by the state to the federal government to be eligible for gaming." (*Id.*)

The trial court misreads the import of *City of Roseville* in reaching this conclusion. Despite the fact that both this case and *City of Roseville* involved land that a tribe desired to utilize for casino gambling, the two cases are fundamentally different. The plaintiffs in *City of Roseville* challenged the Secretary of the Interior's decision to accept title to the property on the theory that the action would violate several provisions of the federal constitution (and related doctrines), specifically: the Enclaves Clause; the Statehood Clause; the Equal Footing Doctrine; the California Admission Act; as well as the Ninth and Tenth Amendments.

This case, in contrast, does not challenge the decision to take title to the subject real property in trust for the Tribe. Nor does it challenge the constitutionality of the Graton Restoration Act.

Appellants have raised an entirely different issue. They challenge whether the Graton Indians meet the jurisdictional requirements set forth in IGRA. Thus, while appellants do not challenge the authority of the federal government to obtain title to the subject property or to place it in trust for the Tribe, they do indeed

challenge the *effect* of such actions on the state's sovereign jurisdiction.[21]

Indeed, appellants' core argument about the limited methods by which the federal government can obtain jurisdiction over lands within a state's borders was not even raised by the parties in *City of Roseville;* thus, the central issue in the instant appeal was not considered in that case. Although the parties in *City of Roseville* may have assumed that the transfer of title would result in transfer of jurisdiction, appellants have challenged that very assumption and proven it to be incorrect as a matter of law.

In sum, the legal issue presented here is very different from that considered in *City of Roseville.* The trial court's conclusion that the two cases are "identical" is yet a further illustration of the fundamental flaws in the decision below.

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[21] The court below erroneously concluded that appellants' failure to attack the Graton Act or the federal government's decision to take the property into trust "effectively concede[d] all of the elements necessary to establish the validity of the Compact under federal law." (5 JA 1287.) The court simply missed the point: the question here is not the legality of either of those actions, but rather, whether the Graton Act or the federal government's acquisition of title—without more—changed California's unbroken 160-year history of jurisdiction over the subject property and automatically vested some or all of that jurisdiction in the Graton Tribe.

B. The Trial Court Misunderstood Appellants' Jurisdiction Argument

We hasten to add that the trial court erroneously described appellants' argument as an "enclaves theory," suggesting that somehow appellants were contending that the Graton Tribe had to have exclusive jurisdiction over the casino site in order to engage in Class III gaming. (5 JA 1288-89.) Appellants never raised that contention, much less argued along that line. While enclaves clause jurisprudence may illuminate the principles involved in this case, appellants have not brought an "enclaves clause case." Appellants have more broadly brought a *jurisdiction case* in which they contend that the Graton tribe never acquired *any* jurisdiction—exclusive or partial—over the casino site and, for that reason, the compact that allows a Nevada-style casino there violates IGRA and, in turn, Article IV, section 19(f) of the California Constitution, which incorporates federal law.

Although litigants in other cases (such as *City of Roseville*, *supra*) have invoked the Enclave Clause when challenging the government's decision to accept land into trust for casinos, those cases are very different from this one. The issue in those cases concerned the transfer of *title*, not the transfer of *jurisdiction.* To the

extent that those other courts conflated title and jurisdiction, they never reached the issue appellants raise in this case, which is the *effect* of taking title in trust for an Indian tribe. Those other courts assumed that jurisdiction follows title in such instances; appellants question that assumption.

C. The *Cabazon* Decision Does Not Consider the Core Jurisdiction Issue That is Presented in This Appeal

The trial court made a pointed reference to the *Cabazon* decision (*California v. Cabazon Band of Mission Indians, supra,* 480 U.S. 202) and asserted that:

> *Cabazon* conclusively demonstrates that exclusive tribal or federal jurisdiction over land is not necessary to support gaming on Indian lands in California.

(5 JA 1286.)

The court's statement was wrong for two reasons. First, as noted already, the issue is not whether the federal government or the tribe has "exclusive" jurisdiction; the issue is whether they have even partial jurisdiction. Second, in *Cabazon* the tribes involved—the Cabazon and Morongo tribes—had a long history of jurisdiction over their lands. (See 480 U.S. at 206 & n. 1.) No one challenged that jurisdiction; the issue before the Supreme Court was not the existence of tribal jurisdiction, but rather, the extent of it. *Cabazon* is a world

apart from this case, for in this proceeding there is no longstanding history of tribal jurisdiction over the subject property. Indeed, there is no evidence of *any* tribal jurisdiction over the casino site.

D. The Trial Court's Discussion of Public Law 280 and the Concept of "Cooperative Federalism" Cannot Overcome the Lack of Jurisdictional Transfer with Respect to the Casino Site.

The trial court's decision makes note of the concept of "cooperative federalism"—the notion, embedded in IGRA, that California and the United States should share jurisdiction with respect to tribal gambling. (See 5 JA 1289.)[22] In large part, the court's analysis is based on Public Law 280, which is a significant statute that delegates jurisdiction over traditional Indian lands to particular states. (See 18 U.S.C. § 1162 (criminal cases) and 28 U.S.C. § 1360 (civil

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[22] The phrase, "cooperative federalism" stems from *Artichoke Joe's v. Norton*, *supra*, 353 F.3d at 715. It is important to note, however, that the very concept assumes that a given tribe has sovereignty over a casino site. That is why the Ninth Circuit, quoting the district court in *Artichoke Joe's*, spoke in terms of a "balance of competing sovereign interests." (*Id.*) But that sort of analysis begs the crucial question that lies at the heart of this litigation: how does an Indian Tribe acquire sovereignty over land that it has never occupied and which has been governed by state law since California was admitted to the Union?

cases).) But the court's analysis did not accurately assess the historical context in which Public Law 280 was enacted.

Public Law 280, which was enacted in 1953, involved the federal government's delegation of jurisdiction to the states. The fundamental point here is that Public Law 280 dealt with land over which the federal government already had jurisdiction—either because the land in question had been acquired by the federal government upon a state's admission to the Union; or pursuant to the Enclaves Clause; or jurisdiction had been obtained via cession from an individual state. It goes without saying that there could be no cession of jurisdiction back to the states under Public Law 280 if the federal government did not have it to begin with.

In the present case, the court confronts the opposite end of the spectrum. Instead of analyzing whether the United States has ceded jurisdiction, the court must examine a much different question: how, indeed, does the federal government acquire jurisdiction in the first place?

V. THE TRIAL COURT ERRED WHEN IT APPLIED THE DOCTRINE OF JUDICIAL ESTOPPEL

The trial court also erred in ruling that appellants' case is barred by the doctrine of judicial estoppel. This occurred toward the end of the court's memorandum decision. (See 5 JA 1290-1291.)

The court improperly reasoned that that because one of the appellants had filed a separate lawsuit while this case was pending in an attempt to attack (on CEQA grounds) the widening of a public road to the Graton Casino, they were estopped from raising the jurisdictional claims in this case. That analysis constituted clear error. The doctrine of judicial estoppel is discretionary and it applies only in a narrow set of circumstances: when a litigant takes totally inconsistent positions and, more importantly, has gained an advantage by doing so. (See *MW Erectors, Inc. v. Niederhauser Ornamenal & Metal Works Co.* (2005) 36 Cal.4th 412, 421-423.) The doctrine is equitable in nature, designed to prevent a party from "gaining an advantage by taking one position and then seeking a second advantage by taking an incompatible position." (*People v. Castillo* (2010) 49 Cal.4th 145, 155.) That most certainly did not happen here.

Some factual background is in order. Six months after this action was filed challenging the ratification of the Graton Compact

contained in Government Code section 12012.56(a), one of the petitioners in this case filed an ultimately unsuccessful CEQA challenge to certain road improvements adjacent to and on the subject property being made by the City of Rohnert Park. (See *Stop the Casino 101 Coalition v. City of Rohnert Park*, SCV-252617 (included in the record at 4 JA 1011-1017.) The gravamen of the CEQA petition was that off-reservation road improvements being made by the City of Rohnert Park were beyond the scope of the CEQA exemption provided by a different subsection of Government Code section 12012.56, specifically subsection 12012.56(b)(1)(A)-(F). (4 JA 1012-1013.) Ultimately, the CEQA petition was dismissed due to the petitioner's failure to serve real parties in interest County of Sonoma and the Graton Tribe. (4 JA 974.) The trial court also held that the off-reservation road improvements were covered by the CEQA exemption provided by section 12012.56(b)(1)(C), which exempts the execution of an intergovernmental agreement between a city and the Tribe. (*Id.*)

The positions that appellants took in the two cases were not inconsistent. This case—which was filed first—presents a constitutional challenge to Government Code section 12012.56(a).

The CEQA litigation, as noted immediately above, involved a question of statutory interpretation concerning section 12012.56(b)(1). Needless to say, the CEQA case did not repeat the facial challenge presented here because this case was already on file. The two cases are not the type of "totally inconsistent" pleading the judicial estoppel doctrine is intended to address.

Moreover, appellants Montgomery, Miller and Soares were not even parties to the CEQA case.

Long story short: there is no inconsistency between the CEQA challenge in the other case and the jurisdictional claim in this litigation and appellants have gained no advantage via the two proceedings.

CONCLUSION

With their approval of Proposition 1A, California voters allowed casino gambling only on lands over which a tribe has jurisdiction.

This case presents a new phenomenon not contemplated when Proposition 1A was enacted, namely: the use of non-traditional Indian land, financed by a Nevada casino operator, to create a tribal casino that is otherwise illegal under California law. The casino site at issue

is located on land that was privately owned and state-governed for 160 years prior to the transfer to the federal government.

People wrongly assume that when the federal government accepts land in trust for Indians, tribal sovereignty automatically attaches to the site thus divesting or diminishing state jurisdiction. That has never been the law. Rather, in such circumstances, as we have shown, California retains sovereignty until the state cedes it to the federal government.

The Graton Indians do not have jurisdiction over the casino site. Therefore, the compact at issue is not authorized and the statute approving it violates Article IV, section 19(f) of the California Constitution. The trial court judgment upholding the compact is erroneous and should be reversed by this court.

Declaratory and injunctive relief should issue in favor of appellants so that California's legislative sovereignty is preserved. Specifically, the court should declare that the Graton Compact is not authorized by the California Constitution or IGRA because the tribe does not have any jurisdiction over the casino property; once that is done, the court should remand the case to the trial court for further

consideration of an appropriately tailored injunction that may issue to enforce the declaration of rights.

Dated: 3-4-2014

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CERTIFICATE REGARDING NUMBER OF WORDS IN BRIEF
Rule 8.204(c)(1)
California Rules of Court

The undersigned here by certifies, pursuant to Rule 8.204(c)(1), that this brief consists of 12,973 words, including footnotes, as measured by the "word count" feature of Microsoft Word software.

Dated: 3-4-2014

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PROOF OF SERVICE

I, the undersigned, hereby certify that I am a citizen of the United States, over the age of 18 years and am not a party to the within entitled action. I am employed in the City & County of San Francisco, California and my business address is One Embarcadero Center, Suite 400, San Francisco, CA 94111-3619. I am an active member of the State Bar of California. I am readily familiar with my employer's practice for collection and processing of correspondence for mailing with the United States Postal Service. On the date last written below, I served the following document(s):

APPELLANTS' OPENING BRIEF

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