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11 NO CASINO IN PLYMOUTH

12 **BOARD OF INDIAN APPEALS**  
13 **UNITED STATES DEPARTMENT OF INTERIOR**

14 NO CASINO IN PLYMOUTH,

15 Appellant,

16 v.

17 THE DEPARTMENT OF THE INTERIOR,  
18 REGARDING THE DECISION OF JAMES E.  
19 CASON, Associate Deputy Secretary, and  
20 CARL J. ARTMAN, Associate Solicitor,  
21 Division of Indian Affairs, TO APPROVE THE  
22 INDIAN LANDS DETERMINATION  
23 REQUEST OF THE IONE BAND OF MIWOK  
24 INDIANS OF CALIFORNIA,

25 Respondents.

Docket No.:

**NOTICE OF APPEAL**

26 NOTICE IS HEREBY GIVEN that "No Casino In Plymouth" ("NCIP"), a  
27 concerned citizens' group, appeals the Department of the Interior's ("Department")  
28 determinations set forth in its September 19, 2006 memorandum from the Associate  
Solicitor, Division of Indian Affairs, Carl J. Artman, and its September 26, 2006 letter from  
Associate Deputy Secretary, James E. Cason. Specifically, NCIP appeals the Department's  
finding that the Ione Band of Miwok Indians of California ("Ione Band") may conduct  
gaming on a 228-acre parcel of land located in and adjacent to the City of Plymouth (the  
"Plymouth Parcel") once that land is taken into trust. The Department based this finding on

1 erroneous conclusions that the Ione Band's proposed acquisition constitutes "restored land"  
2 for a "restored tribe," and that the Ione Band sufficiently demonstrated a modern and  
3 historical connection to the land. These findings and conclusions are not supported by the  
4 record and should be disregarded by the Board of Indian Appeals. NCIP therefore seeks a  
5 declaration from the Board that the Plymouth Parcel is not eligible for gaming as "restored  
6 lands" of the Ione Band under Section 20 of the Indian Gaming Regulatory Act.

7 **I. OFFICIALS WHOSE DECISIONS ARE BEING APPEALED**

8 JAMES E. CASON  
9 Associate Deputy Secretary  
10 Department of the Interior

CARL J. ARTMAN  
Associate Solicitor, Division of Indian Affairs  
Office of the Solicitor  
Department of the Interior

11 **II. APPELLANT**

12  
13 NO CASINO IN PLYMOUTH  
14 P.O. Box 82  
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(209) 245-6115

16 **III. BRIEF FACTUAL BACKGROUND**

17 In its efforts to establish a new casino in the City of Plymouth, the Ione Band  
18 has applied to the Secretary to have a 228 acre parcel of land taken into trust and has asked  
19 the National Indian Gaming Commission ("NGIC") to hold that this land is eligible for  
20 gaming pursuant to the Indian Gaming Regulatory Act, 25 U.S.C. § 2701, *et seq.* ("IGRA").  
21 It is noteworthy that the Ione Band does not own the 228 acres it asks the Secretary to take  
22 into trust, nor, as set forth below, does the Ione Band have any present or past economic,  
23 historical or cultural ties to the land.

24 The IGRA regulations prohibit gaming on lands acquired by a tribe after  
25 October, 1988 unless one of the exceptions set forth in 25 U.S.C. § 2719 applies, or the tribe  
26 complies with a two-part review process through which the Secretary and the State Governor  
27 conclude that gaming would be in the best interest of the tribe and would not be detrimental  
28 to the surrounding community. The Ione Band sought to circumvent this more burdensome

1 two-part review process by asking the NGIC to determine that its proposed acquisition  
2 constitutes restored "Indian lands" falling within one of the § 2719 exceptions.

3 The NGIC deferred its review of the Ione Band's request to the Solicitor's  
4 Office of the Department of Interior, which set forth its determination that the Plymouth  
5 Parcel was eligible for gaming under the IGRA in the September 19, 2006 memorandum  
6 signed by Carl J. Artman, which is attached hereto as Exhibit A. The Associate Deputy  
7 Secretary, James E. Cason concurred with the findings set forth in that memorandum by  
8 letter dated September 26, 2006.

9 The Department found that the Plymouth Parcel would be eligible for gaming  
10 because it could be taken into trust as part of "the restoration of lands for an Indian tribe that  
11 is restored to Federal recognition." 25 U.S.C. § 2719(b)(1)(B)(iii). This finding constitutes  
12 government action in that it renders the Plymouth Parcel eligible for gaming once the land is  
13 taken into trust. Accordingly, the Department's agency action is ripe for review under the  
14 Administrative Procedures Act. NCIP therefore brings this appeal before the Board.

#### 15 **IV. STATEMENT OF REASONS**

16 Each of the findings set forth in the Department's September 19, 2006  
17 memorandum is based upon erroneous facts and conclusions that render its final opinion at  
18 odds with the terms of the IGRA. First, it is incorrect that the federal government recognized  
19 the Ione Band through its 1972 letter from the Commissioner of Indian Affairs. Second, it is  
20 incorrect that the federal government subsequently "terminated" its recognition of the Ione  
21 Band in litigation against the Band in 1992. Third, it is incorrect that the Ione Band was  
22 "restored" by the Assistant Secretary's 1994 letter. Fourth, it is incorrect that the Plymouth  
23 Parcel qualifies as "restored lands" within the meaning of Section 20 of IGRA.

##### 24 **A. The Federal Government Did Not "Recognize" The Ione Band In 1972.**

25 The Department begins its analysis with the erroneous assumption that the  
26 Department recognized the Ione Band through a 1972 letter from the then Commissioner of  
27 Indian Affairs, Louis Bruce, which stated only that "federal recognition was *evidently*  
28 extended to the Ione Band of Indians at the time that the Ione land purchase was

1 contemplated." (emphasis added). This letter does not constitute a decision by the  
2 Commissioner, but only a reference to prior government action. The Department has not  
3 cited the prior governmental action as the basis for Federal recognition because it is not  
4 pertinent to the Plymouth Parcel. The land purchase referenced in the 1972 letter involved a  
5 transaction wholly unrelated to the Plymouth Parcel (a parcel that was not acquired by the  
6 Federal government) whereby several individual Ione Band members purchased  
7 approximately 40 acres of land in another location. This letter, which in no way suggests an  
8 initial recognition of the Ione band, forms the unstable foundation for the rest of the  
9 Department's erroneous analysis.

10 **B. The Government Could Not Have "Terminated" Its Recognition of The**  
11 **Ione Band in 1992 Because It Had Never Recognized The Band.**

12 The Department next concludes that the Ione Band was implicitly terminated  
13 via the government's arguments in a 1992 lawsuit (*Ione Band of Miwok Indians, et al. v.*  
14 *Burris, et al.* No. S-90-0993LKK/EM (E.D. Cal. 1992) against the Band where the  
15 government asserted that the Band was required to comply with the Department's  
16 recognition regulations before the government would recognize it as a tribe. In essence, the  
17 Department is now contradicting the position taken by the Federal government in its prior  
18 pleadings. Whereas the Federal government argued in the 1992 lawsuit that Louis Bruce's  
19 1972 letter *never did* recognize the Ione Band as a tribe, the Federal government, through the  
20 Department, is now arguing that its position was actually that the government was  
21 "terminating" its recognition.

22 The District Court judge in the *Burris* case adopted the government's  
23 contentions and concluded that the Band had not been recognized and must comply with the  
24 recognition regulations if it wanted to be recognized. The IBIA adopted these same  
25 contentions. *Ione Band of Miwok Indians v. Sacramento Area Director*, 22 IBIA 194 (1992).  
26 The Department is not free to now contradict the government's 1992 position. The  
27 conclusion that the Ione Band had not been previously recognized as of 1992 was confirmed  
28 by the government in its own pleadings, by the District Court in its order and by the IBIA.

1 This Board should acknowledge those findings and declare that the Department's September  
2 19, 2006 re-interpretation of the government's prior position is erroneous.

3 **C. Recognition Of The Ione Band Was Not "Restored" In 1994.**

4 After incorrectly assuming that the recognition of the Ione Band had been  
5 terminated in 1992, the Department next concludes that the then Assistant Secretary of  
6 Indian Affairs, Ada Deer's March 22, 1994 letter "restored" the Federal government's  
7 recognition of the Ione Band. Of course, this conclusion is premised on the demonstrably  
8 erroneous assumptions that the Band was formerly recognized (it was not) and formerly had  
9 that recognition terminated (it did not).

10 More importantly, the Department should not have relied upon Ms. Deer's  
11 1994 letter as evidence of "restoration" because as of 1994, compliance with the  
12 administrative acknowledgement process was the only means by which the Band could have  
13 been recognized. The Assistant Secretary's letter was plainly insufficient to accomplish  
14 what the Department now claims it did, for in order to correct any prior errors the  
15 government may have made with respect to recognition of tribes, "any corrective action must  
16 be taken [in] the forum established in the acknowledgment regulations." *Ione Band of*  
17 *Miwok Indians v. Sacramento Area Director*, 22 IBIA 194, \*3 (1992). The Ione Band has  
18 not been formally recognized through the administrative acknowledgement process, so the  
19 Department's conclusion that the Band's recognition was "restored" is clearly in error.

20 **D. The Plymouth Parcel Cannot Qualify As "Restored Lands."**

21 Even if, arguendo, the Ione Band were a previously recognized tribe who's  
22 recognition was terminated and then subsequently restored, only land that qualifies as  
23 "restored lands" under IGRA, Section 20 can be used for gaming. The Plymouth Parcel does  
24 not meet these qualifications. "Restored lands" must satisfy the following criteria: "land  
25 that could be considered part of such restoration might appropriately be limited by the factual  
26 circumstances of the acquisition, the location of the acquisition, or the temporal relationship  
27 of the acquisition to the tribal restoration." *Wyandotte Nation v. National Indian Gaming*  
28 *Commission*, 437 F.Supp.2d 1193, 1214 (D. Kann. 2006). It was clearly not the intent of the

1 statutes to allow gaming on any and all lands that a “restored tribe” acquired after the  
2 restoration of its status. Only lands that bear a significant connection to the tribe are eligible.

3 The Plymouth Parcel has no significant relation to the Ione Band. To establish  
4 such a relationship, the Band would have had to demonstrate that the land was of “historic,  
5 economic and cultural significance” to the tribe, such that it can fairly be considered a  
6 “‘restoration of lands’ in a historic, archaeological, and geographic sense.” *Grand Traverse*  
7 *Band of Ottawa and Chippewa Indians v. U.S. Attorney for the Western District of Michigan*,  
8 198 F.Supp.2d 920, 936 (W.D. Mich. 1999). The NIGC has further clarified that a tribe’s  
9 historical connection to the subject land must be “longstanding” and “ancient” before it can  
10 be deemed “restored land” under 25 U.S.C. §2719(b)(1)(B)(iii). *Wyandotte*, Ibid.

11 Here, the evidence submitted by the Ione Band provides no information to  
12 support a conclusion that the Band’s members are genealogically linked to any Indians who  
13 may have long-established roots on or near the Plymouth Parcel. There is no record of a  
14 permanent Indian settlement ever being located at or near the Parcel, or even that the Parcel  
15 ever contained a single Ione Indian home. There is no evidence that the property ever  
16 contained an Indian school, burial ground or any site that is or was culturally significant to  
17 the members of the Band. In fact, what the record indicates is that the 40 acre parcel of Ione  
18 land that was referenced in Louis Bruce’s 1972 letter, not the 288 acre Plymouth Parcel, may  
19 be the Band’s historic land base.

20 Similarly, the Plymouth Parcel also cannot satisfy the “temporal relationship”  
21 prong of the “restored land” criteria. Under the Department’s flawed reading of the  
22 historical record, the Band was “restored” in 1994. There is no evidence that the Band made  
23 any efforts to acquire the Plymouth Parcel until now – and to this date, the Band still does  
24 not own the Parcel. In fact, the 1994 letter, as well as the 1972 letter to which it refers,  
25 relates to the 40-acre parcel of land owned by several Ione Indians, not the Plymouth Parcel.  
26 Accordingly, there is no temporal relationship between the 1972 or 1994 letters and the  
27 current proposed acquisition of the Plymouth Parcel twelve years later.

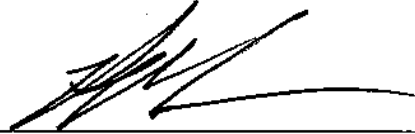
1 Under these circumstances, the Ione Band cannot possibly establish the  
2 requisite "conclusive factual and legal findings" to support the application of the IGRA  
3 restoration exception. The Plymouth Parcel therefore cannot qualify as "restored land"  
4 under 25 U.S.C. § 2719(b)(1)(B)(iii), and therefore is not eligible for gaming.

5 **V. REQUESTED RELIEF**

6 NCIP respectfully requests that the Board hold the Department's findings to be  
7 in error and declare that the Plymouth Parcel is not eligible for gaming as "restored lands" of  
8 the Ione Band under Section 20 of the IGRA.

9  
10 DATED: October 24, 2006

11 JOHN M. ROCHEFORT  
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**PROOF OF SERVICE**

I, Marlene D. Yokley, declare:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Weston, Benshoof, Rochefort, Rubalcava & MacCuish LLP, 333 South Hope Street, Sixteenth Floor, Los Angeles, CA 90071. I am over the age of eighteen years and not a party to the action in which this service is made.

On October 24, 2006, I served the document(s) described as **NOTICE OF APPEAL** on the interested parties in this action by enclosing the document(s) in a sealed envelope addressed as follows:

BY FEDERAL EXPRESS

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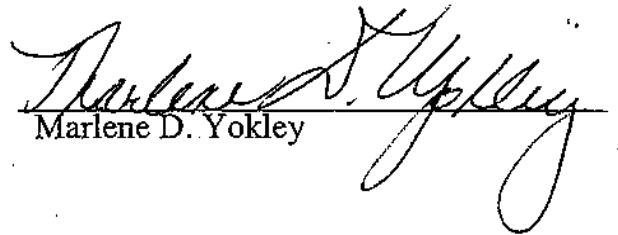
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26  
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