



# NATIONAL CONGRESS OF AMERICAN INDIANS

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### RESOLUTION #SPO-01-012

#### EXECUTIVE COMMITTEE

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*St. Regis Mohawk Tribe*

### **Title: Support Berry Creek Rancheria in the State of California's Appeal of Bureau of Indian Affairs' Decision to take Land in Trust for Berry Creek Rancheria**

**WHEREAS**, we, the members of the National Congress of American Indians in our own distinct territories, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants the inherent sovereign rights of our Indian nations, rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States, to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the health, safety and welfare of the Indian people, do hereby establish and submit the following resolution; and

**WHEREAS**, the National Congress of American Indians (NCAI) was established in 1944 and is the oldest and largest national organization of American Indian and Alaska Native tribal governments; and

**WHEREAS**, the Tyme Maidu Tribe of the Berry Creek Rancheria ("Berry Creek Rancheria" or Tribe") is a federally recognized Indian tribe which is recognized by the United States as having governmental jurisdiction over its reservation, consisting of 32 acres approximately 3 miles east of Oroville, Butte County, California, which land was accepted into trust on August 3, 1988; and

**WHEREAS**, in December 1994, the Tribe applied to the Bureau of Indian Affairs ("BIA") to have 18.5 acres of land contiguous to its reservation ("Contiguous Parcel") acquired in trust by the federal government to be used for a parking lot and access road to the Tribe's casino; and

**WHEREAS**, on May 7, 2001, the BIA issued a notice of decision to accept the Contiguous Parcel in trust for the Tribe; and

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**WHEREAS**, the State of California ("State") has since appealed the BIA's decision to the Interior Board of Indian Appeals ("Appeals"), arguing that the Contiguous Parcel should not be taken in trust, because (1) the acquisition for a parking lot is for "gaming" and this may not be approved without a Secretarial "two-part determination" and the governor concurrence; and (2) the Tribe's class III gaming compact ("Compact") with the State restricts the Tribe's ability to have land take in trust by the BIA; and

**WHEREAS**, the Tribe, in opposing the State's appeal, has argued that (1) the acquisition of land for a parking lot is not a gaming acquisition since no gaming is conducted in the parking lot, (2) a Secretarial "two-part determination" and the governor's concurrence are not required when land is to be taken in trust for a parking lot or access road to a casino, or for any other use that does not involve actual gaming; (3) BIA's policy is correct that the taking of land in trust for a parking lot is not an acquisition for gaming; (4) a class III gaming compact should not restrict a tribe's ability to have land taken in trust by the BIA, and (5) the Contiguous Parcel should be taken in trust because (i) the intended use as a parking lot is not "for gaming," and because (ii) the Contiguous Parcel is adjacent to the boundaries of the Tribe's reservation as of October 17, 1988, the effective date of the Indian Gaming Regulatory Act ("IGRA"); and

**WHEREAS**, the NCAI recognizes that the State's arguments in the Appeal, if successful, could severely undermine present and future efforts by other Indian tribes to have land acquired in trust by BIA; and

**WHEREAS**, the NCAI agrees with the Tribe's position that acquisition of land to be used as a parking lot for a casino is not an acquisition "for gaming" (since not actual gaming is conducted in or on the parking lot), and thus, does not require a Secretarial "two-part determination" or concurrence of the governor; and

**WHEREAS**, the NCAI agrees with the Tribe's position that its class III gaming Compact, and similar compacts in other states and involving other tribes, does not restrict the Tribe's ability to have land taken in trust by BIA; and

**WHEREAS**, that NCAI agrees with the Tribe's position the Contiguous Parcel should be taken in trust (i) the intended use as a parking lot is not "for gaming" and because (ii) the Contiguous Parcel is adjacent to the boundaries of the Tribe's reservation as of October 17, 1988; and

**WHEREAS**, the NCAI recognizes that nearly seven years have passed since the Tribe originally applied to have the Contiguous Parcel taken in trust, and the NCAI agrees with the Tribe that the decision to take the Contiguous Parcel in trust should not be further delayed.

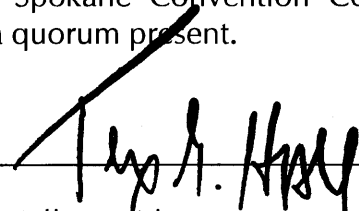
**NOW THEREFORE BE IT RESOLVED**, that the NCAI does hereby strongly support, without exception, the Tribe's positions in the Appeal (and in any further proceedings related thereto), and that the NCAI hereby strongly opposes the State's arguments in said Appeal; and

**BE IT FURTHER RESOLVED**, that the NCAI urges the IBIA to affirm, on an expedited basis, BIA's decision to accept the Contiguous Parcel in trust; and

**BE IT FINALLY RESOLVED**, that this resolution shall be the policy of NCAI until it is withdrawn or modified by subsequent resolution.

**CERTIFICATION**

The foregoing resolution was adopted at the 58<sup>th</sup> Annual Session of the National Congress of American Indians, held at the Spokane Convention Center, in Spokane, Washington on November 25-30, 2001 with a quorum present.

  
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Tex Hall, President

ATTEST:



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Colleen F. Cawston, Recording Secretary

Adopted by the General Assembly during the 58<sup>th</sup> Annual Session of the National Congress of American Indians, held at the Spokane Convention Center, in Spokane, Washington on November 25-30, 2001.