

MEMORANDUM OF UNDERSTANDING
Between
CALIFORNIA FEE TO TRUST CONSORTIUM TRIBES
And
BUREAU OF INDIAN AFFAIRS PACIFIC REGIONAL OFFICE

This Memorandum of Understanding (hereinafter the "Agreement") is entered into by and between the California Fee-to-Trust Consortium Tribes (hereinafter the "Consortium") and the Department of the Interior, Bureau of Indian Affairs Pacific Regional Office, (hereinafter "PRO") (collectively referred to as "the Parties") as of the date set forth below.

This Agreement is being entered into for the purpose of setting forth, in writing, the understanding of the relationship of the Parties and facilitating the expeditious processing of fee-to-trust applications submitted by participating Consortium tribes (hereinafter the "Project").

RECITALS

- A. The need for increased land base is imperative to the tribes of California. Most tribes do not have sufficient land to meet current housing; community and economic development needs and a significant number have no land at all.
- B. A number of factors have combined to make it difficult for current California Regional and Agency staff to manage the fee-to-trust acquisition needs. Consequently a backlog of applications currently exists which is compounded by the increasing number of applications filed each year.
- C. The gap between land into trust applications and land being accepted into trust by the Secretary of the Interior is widening.
- D. The authority of the Bureau of Indian Affairs to re-program TPA funds to this Project is found at 25 U.S.C § 123c, § 458 cc (b) (3) and § 450j (j), 516 DM 6, appendix 4, National Environmental Policy Act Revised Implementing Procedures, 602 DM 2, Land Acquisitions; Hazardous Substances Determinations, and 151 Cong. Rec. S7336 (2005).
- E. The reference to the Pacific Regional Office acknowledges that the Pacific Regional Office has responsibility, and accountability for the administration of the California Regional and Agency staff.

TERMS AND CONDITIONS

I. CONSORTIUM AGREEMENT TERM

- 1. This Agreement shall be in effect for three (3) years beginning the Fiscal Year October 1, 2008 through Fiscal Year ending September 30, 2011, at which time it shall be reviewed for possible extension.

2. If the Consortium has not voted to renew this Agreement at least six months (6) before the close of the third fiscal year of the Agreement, it will be deemed expired as of the date of the end of the third fiscal year and the terms and conditions contained herein will terminate.

II. MEMBERSHIP

1. Conditions Precedent/Eligibility

- (a) The Tribal Resolution: Participation in the Project will not become effective until the Consortium Project Leader (as defined Section IV(1)) has received a signed Tribal Resolution from the interested Tribe (a sample is attached), which contains an acknowledgement of the minimum required financial contribution and commitment of the required TPA funds, and acknowledgment of the necessity to commit to becoming a signatory of the Agreement and to be bound by its terms.
- (b) The Agreement and contribution: The Tribe must sign the Agreement and complete any additional paperwork necessary to facilitate the re-programming of TPA funds to the Project.
- (c) In addition to the Tribal Resolution, Tribes will submit a letter identifying the designated tribal representative and alternates for the purpose of representation at Consortium meetings. Consortium Tribes reserve the right to change the names of individual tribal representatives at their discretion.

2. Minimum Financial Participation

- (a) Tribes may participate by contributing a minimum of three thousand dollars (\$3,000.00) per fiscal year from their TPA funds for three consecutive years.
- (b) Newly recognized Tribes that have not received their TPA funds may have their minimum contribution waived until they have received their TPA.

III. ADVISORY COMMITTEE

1. Purpose

- (a) The Fee-To-Trust Consortium Advisory Committee (hereinafter the "Committee") comprised of Consortium members, will serve in an advisory capacity acting as a liaison between the Consortium tribes and the PRO staff to assure that the terms and conditions of this Memorandum of Understanding are fulfilled.
- (b) The Committee will help Consortium staff develop agenda and provide assistance in facilitating regular Consortium and Committee meetings and will develop procedures and guidelines to govern the conduct of the Committee.

IV. CONSORTIUM EMPLOYEES

1. Scope of Work.

- (a) The Consortium Project leader will be the PRO Lead Realty Specialist, hereinafter "PRO-LRS"). The PRO-LRS will be responsible for seeing that the BIA

Consortium staff will adhere to the duties and responsibilities required for the processing of Fee-To-Trust Applications for Consortium Tribes.

- (b) The Parties agree that the BIA personnel for the Consortium shall be governed by the terms of this Agreement. Any conflict involving the duties and/or responsibilities of the personnel shall be resolved in accordance with this Agreement and the PRO personnel policies. Federal employee personnel rights are governed by Title 5 of the U.S.C.A. Statutory rights and obligations will not be superceded by this Agreement.

2. Selection of Employees.

- (a) It is agreed that the process for selecting Consortium staff for filling of the Consortium positions will follow federal personnel rules and regulations. The position descriptions and interviewing of prospective candidates will be performed by the PRO.
- (b) The PRO will inform the Advisory Committee of selection criteria and the Advisory Committee may make recommendations.
- (c) The PRO will make the final employee selections and will inform the Consortium of the selected employees.

V. RECORD KEEPING

1. Accounts.

- (a) Complete books of account of the Project's operations, in which each Project transaction shall be fully and accurately entered, shall be kept at the Project's principal office (the PRO), under the care of the PRO-LRS, and at such other locations as the PRO-LRS and Committee shall determine from time to time and shall be open to inspection and copying on reasonable notice by any authorized Consortium member representative during normal business hours. The costs of such inspection and copying shall be borne by the particular Consortium member.
- (b) PRO acknowledges that it has established a separate and distinct account from other BIA Realty operations for the Project.

2. Accounting. The financial statements of the Project shall be prepared in accordance with generally accepted accounting principles and shall be appropriate and adequate for the Project's intended purpose and for carrying out the provisions of this Agreement. The fiscal year of the Project shall be October 1 through September 30.

3. Records. At all times during the term of existence of the Project, the PRO-LRS shall keep or cause to be kept the books of account referred to in Section IV, together with:

- (a) A current list of the contact information, which also identifies the Consortium member contribution;
- (b) A copy of this Agreement and any other operating documents (if any);
- (c) Financial statements of the Project for the six most recent fiscal years;
- (d) The books and Records (including budgets) of the Project as they relate to the

Project's internal affairs for the current and past four fiscal years.

4. Status Reports. A minimum of once per quarter, the PRO-LRS shall cause to be prepared a Fee-To-Trust Consortium member land into trust status report. The reports shall be delivered at the quarterly Fee-To-Trust Consortium meetings or by mail; whichever is reasonably calculated to provide the member with the information in a timely manner.

VI. **MEETINGS: REGULAR, SPECIAL, LOCATION, NOTICE, CALL, AND QUORUM.**

1. Regular meetings. Regular meetings of the Consortium shall be held once every quarter, unless waived by a quorum of the Consortium.
2. Special Meetings. The PRO-LRS, the Committee, or Consortium members representing at least 50% of the Consortium members shall call special meetings at any time. If a meeting of the Consortium is called by the Consortium members, notice of the call shall be delivered to the PRO-LRS and the Fee-to-Trust Advisory Committee.
3. Location. Meetings may be held at the PRO or at such other location as may be designated by the Consortium. Effort shall be made to assure that a reasonable split between locations throughout Northern, Central and Southern California is achieved.
4. Notice. Following the call of a meeting, the PRO-LRS shall give notice of the meeting no less than fourteen, or more than 60 calendar days prior to the date of the meeting to all Consortium members. The notice shall state the place, date, and hour of the meeting and the general nature of business to be discussed.
5. Quorum/Voting.
 - (a) A quorum at any meeting of the Consortium members shall consist of at least thirty percent (30%) of the Consortium members.
 - (b) There will be one vote per tribe.
6. Minutes.
 - (a) The PRO-LRS, Fee-to-Trust Advisory Committee and/or Consortium will dedicate an individual to serve as secretary of the meetings.
 - (b) A draft of the minutes will be prepared and distributed to Consortium members within 14 days of the meeting for comment and verification before becoming part of the record of the Project.

VII. **GENERAL PROVISIONS**

1. Freedom of Information Act (FOIA). Any Freedom Of Information Act (hereinafter "FOIA") requests to the BIA shall be disclosed immediately to the particular tribe upon which the particular request is made, including the details of the specific information requested and a copy of the response and enclosures.

2. Notices. All notices hereunder shall be given in writing by mail (postage prepaid), messenger or facsimile. The earlier of: (a) actual receipt; (b) the date of messengering, telecopying or of personal delivery (provided written confirmation is received); or (c) 3 business days after the date of mailing, shall be deemed to be the date of service.

Mail and Messenger:

United States Department of the Interior
Bureau of Indian Affairs
2800 Cottage Way
Sacramento, California 95825
Attention: California Tribal Fee to Trust Consortium PRO Lead Realty Specialist

Consortium Members
Addresses attached

3. Dispute Resolution. Any dispute as to the interpretation of any provision of this Agreement will be submitted to the Committee who will review all relevant material pertaining to the dispute. The Committee will issue a written decision. The Committee may not issue any decision in contravention of employee rights as governed by Title 5 of the Anti-Deficiency Act at Title 31 of the United States Code. Parties to the Agreement may use services of the Department's Alternative Dispute Resolution Office.
4. Entire Agreement. This Agreement sets forth the entire agreement and understanding between the Parties as to the subject matter hereof and merges and supersedes all prior discussions, agreements and understandings of any and every nature between them, and neither party shall be bound by any condition, definition, warranty or representation other than expressly set forth or provided for in this Agreement, or as may be, on or subsequent to the date hereof, duly enacted pursuant to Section VII(5) of this Agreement or set forth in writing and signed by the Parties to be bound thereby; and this Agreement may not be changed or modified except by a duly enacted amendment pursuant to Section VII(5) of this Agreement or an agreement in writing signed by the Parties.
5. Amendment. This agreement may be amended by a majority of the Consortium Tribes at a duly noticed and held meeting of the Consortium and with the concurrence of the BIA Pacific Regional Office.
6. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Consortium Members, Consortium staff and its successors and assigns, and executive and employees, agents, and legal representatives.
7. Dissolution/Withdrawal
- (a) The Consortium may be dissolved by the affirmative vote of a majority of the members taken at least 60 days before the end of the then-current fiscal year; to be effective at the end of the fiscal year in which the vote is taken.
 - (b) A Tribe may withdraw from the Consortium for the remainder of the term of this

Fee-To-Trust Consortium
Memorandum Of Understanding FY08-11
Page 6 of 7

agreement by giving written notice, by Tribal Resolution, of such intent to the Consortium PRO-LRS at least 90 days prior to the end of the then-current fiscal year.

CERTIFICATION

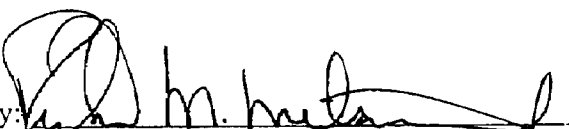
This Agreement entered into by and between the Consortium members set forth below and the Pacific Regional Director does hereby take effect beginning the Fiscal Year October 1, 2008 through FY ending September 30, 2011, at which time this Agreement may be extended, amended or rescinded.

Bureau of Indian Affairs, Pacific Regional Office

By: 
Pacific Regional Director

Dated: 9/29/08

Consortium Member (Tribe): Agua Caliente Band of Cahuilla Indians

By: 
Richard M. Milanovich
Tribal Chairperson

Dated: 9-19-08

Tribal Resolution # 41-08

Dated: September 16, 2008