

# Santa Ynez Valley Concerned Citizens

Board of Directors

August 12, 2012

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The Honorable Don Young  
Chairman, Subcommittee on Indian  
and Alaska-Native Affairs  
1324 Longworth House Office Building  
Washington, D. C. 20515

The Honorable Ben Ray Lujan  
Ranking Member, Subcommittee on Indian  
and Alaska Native Affairs  
1324 Longworth House Office Building  
Washington, D.C. 20515

## **Re: Comments on August 2, 2012 Oversight Committee Hearing on Indian Lands**

Dear Chairman Young and Congressman Lujan:

The Santa Ynez Valley Concerned Citizens (SYVCC) takes this opportunity to comment on your Oversight Committee Hearing of August 2, 2012 entitled: *"Indian Lands: exploring resolutions to disputes concerning Indian tribes, state and local governments, and private landowners over land use and development."* At this hearing, Santa Ynez Band of Chumash Indians Chairman Vincent Armenta testified for his tribal government. He provided the committee with an eight page statement and four pages of exhibits that set forth his perspective of events within the Santa Ynez Valley regarding his tribe's fee-to-trust acquisition experience.

Founded in 2000, the mission of the Santa Ynez Valley Concerned Citizens (SYVCC) is to inform, mobilize and articulate the concerns of the 22,000+ citizens of the greater Santa Ynez Valley on issues of land use, private property, and stewardship of community resources. Where appropriate, we promote constructive dialogue on issues of civic concern and request accountability from governmental entities and officials. Our paramount objective is to be a constructive part of solutions on land use issues that impact the Santa Ynez Valley community. Because the Indian Gaming Regulatory Act (IGRA) Section 20 provides "limited exceptions" for gaming on "after acquired lands", the fee-to-trust process has become a significant area of controversy in our community.

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When we read the title of your August hearing we looked forward to meaningful dialogue on the inherent weaknesses in the construction, evaluation and application of *25 CFR 151* by the Bureau of Indian Affairs, processes which have fueled continuing disputes between the Santa Ynez Band of Chumash Indians, Santa Barbara County, and the local communities of the Santa Ynez Valley. We were hopeful that the inequities and problems inherent in the fee-to-trust process would be aired and yield fair and meaningful legislative action to repair and update this critical federal program and curtail abuses, as have been seen here in our community and in numerous other communities across California since the inception of legalized gaming. It is our belief that fee-to-trust is an important tool in the federal arsenal to address chronic poverty and economic inequities on tribal lands. However, we also contend the program was never designed for wealthy gaming tribes fueled by enormous gaming revenues to utilize the program to circumvent state and local regulations, zoning requirements, and tax revenue contributions that fund critical services for the greater community.

SYVCC has reviewed the submissions and testimony of Chumash Tribal Chairman Armenta and the testimony of all witnesses before your committee, as well as the video record of the August 2, 2012 hearing. Upon our review we assert, with all due respect, that, having failed in numerous attempts to elicit support from the surrounding communities (including local governments, and the elected federal and state government officials whom represent the Santa Ynez Valley) to take 1400 acres of land presently under state and county jurisdiction into federal trust, Chairman Armenta has sought legislative intervention from your committee to circumvent the existing Bureau of Indian Affairs process for fee-to-trust. Furthermore, he has chosen to make this case to your committee by disparaging neighboring communities and elected officials, accusing neighbors of racism and intransigence, blaming others for lengthy delays in litigation on other properties, while bemoaning the diligence of the current B.I.A. processes and their corresponding time frames.

We believe his statements to your committee are misleading and in certain instances contain significant omissions of factual information. Collectively, this misinformation and the omissions amount to an incomplete and distorted history of events as presented to your committee. We respectfully request that our letter be considered a Statement for the Record of the Oversight Hearing of August 2, 2012. If there are additional questions please do not hesitate to contact me.

## DISCUSSION

SYVCC will comment on: (1) a brief history of the relationship between the Chumash Tribe and their neighboring communities; (2) the Tribe's 6.9 ac. fee-to-trust application, complications delays, omissions; (3) omissions regarding the proposed fee-to-trust application for the 1400 acres known as "Camp Four"; and, (4) whether congressional intervention is appropriate.

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### A Brief History

In 1999 a group of residents of the Santa Ynez Valley comprising many sectors of the various communities, including a representative appointed from the Chumash tribe, undertook a community visioning process in advance of the scheduled update of the community's General Plan. This seminal document, the *Valley Blueprint*, articulated a broad based vision for preservation of the rural agricultural character of the Santa Ynez Valley. Within weeks of finalization and publication of the *Valley Blueprint*, and on the heels of the passage of California Proposition 1A legalizing tribal gaming, the Chumash published a small classified notice of intent to construct a 269,000 square foot concrete parking structure, the largest single structure ever constructed in the valley. No press release or announcement to the community nor project description to county planning offices was presented despite the enormity of the project scope. Thus began a history of secretive and less than candid communication by the Chumash leadership with the neighboring communities. Between 2000 and 2005, the Chumash reservation underwent construction of almost one million square feet of intensive urban development on their remaining level land, all amid the farms, fields, schools, parks and residences of Santa Ynez.

Concurrent to this development of the tribe's casino complex, the tribe acquired several parcels of additional property proximate to its casino. The tribal ownership represents the largest percentage ownership of undeveloped commercial property in our township. One such parcel of 6.9 acres was proposed for a museum, commemorative park and a 27,000 square foot commercial retail building. (Attachment 1 – 6.9ac Site Plan) The Chumash sought to take this 6.9 acre parcel into trust under section 20 of the IGRA which allowed for contiguous parcels to be used for gaming purposes. Additionally, in 2003, the Chumash announced a partnership with actor/developer Fess Parker to take 756 acres of the 1400 acre parcel known as "Camp Four" into federal trust with a development plan calling for two golf courses, a 300 unit resort, ancillary support buildings and 250 residences. (Attachment 2 – Portion of Camp 4 Site Plan) With vocal public outrage at the prospect of such intensive development on fee-to-trust land out of local and state jurisdiction and antithetical to the Community's *Valley Blueprint*, Parker dissolved the proposed partnership.

In 2005, the Western Regional Office of the B.I.A. approved the taking of the aforementioned 6.9 acre parcel into federal trust, this despite significant public response and opposition by local government. Subsequently, SYVCC and three other groups appealed the BIA decision to the Interior Board of Indian Appeals. In 2005, SYVCC offered to drop their appeal to the 6.9 ac. fee-to-trust application and provided the County of Santa Barbara a proposed draft Memorandum of Understanding (MOU). (Attachment 3 – MOU) SYVCC further urged the County of Santa Barbara to invite the tribe in for consultation and negotiation of a local mitigation agreement. However, when the deadline for an appeal elapsed and it was too late for the County of Santa Barbara to file an appeal, Chairman Armenta declined to negotiate any further on the development of a possible agreement that clearly had the potential to resolve the controversy.

The IBIA ruled that the appellants did not have "standing" to sue. This decision was further appealed and a final ruling granted standing to the local groups. It coincided with the 2012 United States Supreme Court ruling in *Match-E-Be-Nash-She-Wish Band of Pottawatomí Indians v. Patchak*, where a similar conclusion was obtained. Here, the Secretary of the Interior argued that citizens have no role in the fee-to-trust process and thus have no standing to challenge a secretarial determination to acquire land in trust for an Indian tribe. The U.S. Supreme Court found in favor of standing for citizens and impacted entities.

In 2010, the Chumash acquired from the Fess Parker estate the entire Camp Four parcel (Attachment 5) which they had previously proposed for substantial development and announced plans to take the property into trust. The announced purpose was to allocate 200 acres for construction of tribal housing. No plans were provided for the remaining 1200 acres. Once again the tribe has made little or no effort to address the community's concerns, responding with an assertion of tribal sovereignty. Having failed to generate support from state and federal officials representing our local area, the tribe has sought congressional legislation to circumvent the Interior Department fee-to-trust process. (Due to some apparent misunderstanding at the August 2 hearing regarding the adjoining residential community's characteristics, Attachment 4 provides photos typical of the subject area.)

#### **The Tribe's 6.9 Acre Fee-to-Trust Application, Complications, Delays and Omissions**

As has been stated earlier in this memorandum, the testimony of Chumash Chairman Armenta lacked important details regarding their fee-to-trust application for the 6.9 acre parcel. These inadequacies are listed below:

1. Chairman Armenta failed to include the proposed construction of a 27,000 square foot commercial retail building on the parcel, all of which can be used for gambling or gambling related uses. (Attachment 1– 6.9 ac. Site Plan) Yet, not one word of this is mentioned in his testimony to your committee.
2. Chairman Armenta failed to acknowledge that the proposed Museum and Commemorative Park could have been constructed under local jurisdiction with the same tax exempt status sought through a fee-to-trust acquisition; and, further that the community publicly supported and encouraged the project.
3. Chairman Armenta failed to note that the Chumash sought to take the 6.9 acre parcel into trust under the exception in section 20 of the IGRA which allowed for contiguous parcels already owned by the tribe to be used for gaming purposes, a significant concern of local government and community members alike.
4. While Chairman Armenta referred to a "graveyard" on the site, he failed to make clear that the application does not mention a "graveyard." Rather, reference is to "significant archaeological find on the property" or "village site". There does not appear to be an existing graveyard but rather a "potential" archaeological site that has possibly never been field checked as to its authenticity or location.

5. Chairman Armenta failed to acknowledge the 2005 Memorandum of Understanding (Attachment 3) proposed to the tribe and the county by SYVCC which mirrored terms offered by the Chairman to the county and would have forestalled litigation with potential for a substantive agreement between the tribe and county government to address concerns.
6. Chairman Armenta failed to acknowledge the tribe's unilateral withdrawal from negotiations with the county once the expiration of the appeal deadline had expired.
7. Chairman Armenta failed to acknowledge that significant delays resulted from the tribe's continuances subsequent to the Supreme Court's decision regarding the Carcieri Decision.
8. Chairman Armenta failed to acknowledge the significant additional land acquisitions proximate to the 6.9 acre parcel and their fee-to-trust application status before BIA.
9. Chairman Armenta repeatedly referred to a "few" in the community who opposed the tribe's expansion efforts. This ignores petitions provided to local government with over 13,000 signatures (in a community of 22,000+) opposing expansion of casino gambling beyond the boundaries of the current reservation. It also fails to acknowledge the widely attended public forums and town hall meetings on the subject.

The omissions enumerated above clearly demonstrate that there exists significant context lacking from Chairman Armenta's testimony. His conclusions about local government and the community appear to be skewed to make his case. Nevertheless, it should give pause to members of your committee that a more thorough investigation of the events and circumstances surrounding the Chairman's claims are clearly warranted.

**Omissions regarding the proposed Fee-To-Trust application for the 1400 acres known as "Camp Four"**

The Communities of the Santa Ynez Valley feel genuinely vested in the decisions impacting the property known as "Camp Four" and acquired by the Chumash from the Fess Parker estate in 2010. The property is a visual gateway to the communities that make up the Santa Ynez Valley, located at the confluence of the major arterials for these communities, has been in continual agricultural operation for well over a century, and is a vital component of both the current *Valley Blueprint* document and a vital element of a community-specified zoning strategy to target densities within the core areas of the local townships closer to services, while preserving larger agricultural parcel sizes in the periphery. When frustrated developer Fess Parker sought to circumvent local zoning and state land use policies by partnering with the Chumash in 2003, the citizens of the valley came out in large number to protest the prospect of intensive urban development within the General Plan agricultural element boundaries. In his testimony before your committee, Chairman Armenta left out significant and critical issues that should bear on your deliberations, as follows:

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1. The Chumash have offered a "mitigation agreement" to the County of Santa Barbara which Chairman Armenta argues the county has ignored, thus serving as an argument that the local government is intransigent. What he failed to proffer is that the agreement lacks a project description from which to reasonably ascertain burdens to the county for services to "mitigate" and fails to acknowledge any discussion of the projected use for the 1200 acres remaining if 200 acres are dedicated to housing. (Attachment 6 – Tribe Proposed Cooperative Agreement)
2. Chairman Armenta fails to mention that under current provisions of 25 CFR 151, once a property has been placed in trust, a tribe is able to change uses at will. The impacted jurisdiction gets only one opportunity -- at the initial application for trust status -- to assess and address the jurisdictional burdens posed by the initially proposed use. These burdens include costs for police and fire protection mandated irrespective of whether or not a corresponding revenue source exists to offset the burden under Public Law 280. This "tactical" change of use has happened numerous times in California, most recently in San Diego. In this instance, a tribe (Sycuan) sought public support for tribal housing and upon attainment of trust status instead constructed parking facilities for expanded casino development. The BIA Director, Carl Artman, in a letter to the local community, confirmed the tribe's "right" to change its mind.
3. Chairman Armenta argues for trust status due to an acute need for tribal housing. It is true that the current reservation affords little land available for residential development as a result of the expansive casino development on the available developable land. Because numerous tribal members own luxurious homes in the community as well as continuing to maintain on-reservation housing, it is unlikely Chairman Armenta is unaware that over 200 residential properties are presently for sale in the surrounding communities proximate to the reservation (at significantly reduced market prices and concurrent to the lowest interest rate environment in the state's history).
4. Your committee needs to be aware that there is considerable cost-shifting that occurs when fee land is taken into trust. The loss of property taxes can have a significant impact on the ability of local government to provide social and emergency services to the surrounding community. The loss of property tax affects local school district budgets, further affecting the opportunity of quality education. The loss of jurisdictional authority affects a local government's ability to control the equitable sharing of the regions natural resources which include water, waste water disposal, traffic circulation, law enforcement and emergency services, management of urban sprawl, night sky conservation, pollution, mosquito abatement, conservation of agricultural preserves, as well as compatible land uses. On December 8, 2011, the county supervisor for the area, Doreen Farr, wrote specifically of this potential burden which, by her simple estimate, might cost the county in the millions of dollars over time.
5. Your committee should be aware that the Chumash signaled their interest for expansive and intensive development of this 1400 acre property back in 2003 when they publicly announced a partnership with former property owner Fess Parker. (Attachment 2) Chairman Armenta failed to mention that the Chumash purchased this property from the Parker estate for a sum purportedly in excess of \$40 million, well beyond its value as agricultural land. Because of this

history, it is disquieting that the Chumash have been silent on the remaining 1200 acres of the property in advance of trust status, especially when the prospect exists that they could elect after inclusion to intensively develop the property with no redress by local jurisdictions for the costly burden that development might pose.

6. Chairman Armenta did not discuss what would be done with the residential development on the current reservation. (Attachment 5) The tribe could easily expand intensive development of its gaming interests on this part of its reservation with no oversight or limitation under the current trust provisions. This would further burden existing local government infrastructure without corresponding revenue or mitigations. Alternately, the existing tribal residences on the reservation could become available as rental units for casino employees, creating a 'company town' in which local zoning ordinances limiting occupancies and densities would not apply.

7. Chairman Armenta did not provide information on the significant holdings of real estate that the Chumash presently own throughout the Santa Ynez Valley, developed and undeveloped. If the Chumash are allowed to take the 1400 acres into trust and choose to develop it intensively, the 143 tribal members possess the capacity to inexorably alter the character of the entire Santa Ynez Valley with little or no input from the other 22,000 people who call the valley home. It is this significant concern that SYVCC hopes to convey to your committee.

### **Is Congressional Intervention Necessary?**

The SYVCC believes that congressional intervention on behalf of the Chumash is not necessary. We respectfully request that your committee not usurp the responsibilities of the Department of the Interior as to the pending fee-to-trust proposal by the Chumash. We have attempted to present the community's perspective relative to the comments by Tribal Chairman Armenta, pointing out the inadequacies and inaccuracies of his presentation.

What we hope this letter conveys is a community which has consistently sought equitable, mutually beneficial solutions only to be rebuffed by the tribe.

As a case study, the experience in the Santa Ynez Valley should serve as a demonstration that the inequities present in the current fee-to-trust process warrant thoughtful reform and that before your committee should attempt to impose a solution, it should possess a thorough understanding of the peculiar elements at play within a given community. We believe that consideration of fee-to-trust transfer demands a role for impacted communities and local jurisdictions. The language of the law suggests this but the policies, procedures and interpretations undertaken by the Bureau of Indian Affairs create a vastly uneven playing field and foster a gulf whereby thoughtful negotiations are unobtainable.

The current process is not objective, fair nor transparent. A legislative solution is needed to provide guidance to the Department of the Interior, which has created and sustained the current trust land system. The development of the fee-to-trust land system has been on a case-by-case basis establishing weak procedure and ill-defined substantive standards. The regulation is outdated and does not reflect who tribes and the non-tribal communities are as a people today.

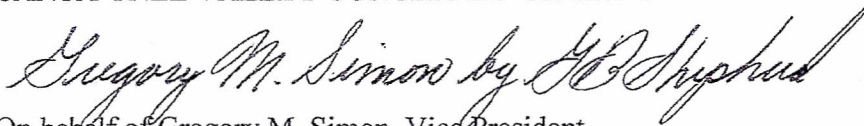
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The fee-to trust regulations divide us and pit entities against one another. We remain hopeful that equitable solutions can come with meaningful dialogue between all affected parties, and submit this letter in that vein of thought.

We respectfully request that our letter be considered a Statement for the Record of the Oversight Hearing of August 2, 2012. If there are additional questions please do not hesitate to contact me.

Sincerely,

SANTA YNEZ VALLEY CONCERNED CITIZENS



On behalf of Gregory M. Simon, Vice President  
by G. B. Shepherd, SYVCC Board Member

cc:

Honorable Governor Jerry Brown  
Jacob Applesmith, Sr. Advisor to Governor Brown  
Honorable Senator Diane Feinstein  
Honorable Congressman Elton Gallegly  
Amy Dutschke, Regional Director, Bureau of Indian Affairs  
Steven K. Linscheid, Chief Administrative Judge, Interior Board of Indian Appeals

Enclosed:

Attachment 1 – 6.9ac Site Plan  
Attachment 2 – Drawing from Fess Parker Office Wall Depicting proposed Camp 4 Site  
Development  
Attachment 3 – SYVCC proposed Memorandum of Understanding  
Attachment 4 – Photos of Residential Community Adjacent to Camp 4  
Attachment 5 – Reservation Area and Chumash ‘Camp 4’ 1400ac Site (Areas A, B, C, D)  
With Adjacent Linda Vista Drive Residential Area K  
Attachment 6 – Tribe proposed Cooperative Agreement  
Attachment 7 – SYVCC Appeal/Amended Appeal re 6.9ac Fee-to-Trust Decision