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VIA FACSIMILE/U.S. MAIL

June 12, 2012

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Sacramento, CA 95814
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Honorable Martin Garrick
California State Assembly Member
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Sacramento, CA 95814
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Honorable Mark Wyman
California State Senator
State Capitol Room 4048
Sacramento, CA 95814
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Re: Opposition to SB 162 - Proposed Categorical Abdication of State and Local Agencies' Ability To Object To Fee-To-Trust Transfer Applications By Federally Recognized Tribes

Dear Senators Anderson and Wyman and Assembly Member Garrick:

We are writing to you on behalf of our client, Mr. Lloyd Fields, in opposition to Senate Bill 162, authored by Senator Anderson and co-authored by Senator Wyman and Assembly Member Garrick. As currently drafted, SB 162 would amend Government Code section 11019.8 to include a new subdivision (c), which would outright prohibit all state and local agencies from opposing any fee-to-trust land acquisition application by a federally recognized Tribe that is for the purpose of housing, environmental protection, or cultural preservation. Mr. Fields believes his recent experience with a similar land transfer by the Morongo Band of Mission Indians is a compelling case showing why state and local agencies should continue to be permitted to fulfill their duty to the public to oversee land development in their jurisdictions, including by opposing applications by a Tribe to transfer property to their trusts, in appropriate cases.

For several decades, at least since 1959, Mr. Fields' family owned a 320-acre parcel of land in the City of Banning, located just off Fields Road (named for Mr. Fields' father, who donated a segment of land for Fields Road), and immediately adjacent to the Morongo Tribe's reservation. In 1990, Mr. Fields sold his 320-acre property to Cobblestone Development, L.P., with the right to

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reacquire a 40-acre piece of the property, along with a 20-foot easement along the easterly boundary of the property. The reason Mr. Fields retained the 20-foot easement was so that he could combine the easement area with an existing public road to provide access to the 40-acre parcel in connection with any future development of that property.

Mr. Fields exercised his right to reacquire the 40-acre parcel in 1994. Then, in 1995, Cobblestone Development transferred the remaining 280 acres to a new owner, who in turn transferred the 280 acres to the Morongo Tribe in 1998. As a result of this last transfer, Mr. Fields' 40-acre property became entirely surrounded by property owned by the Morongo Tribe.

In 2004, without any notice to Mr. Fields, the Morongo Tribe transferred the 280-acre property to the United States of America to hold as part of the Tribe's trust, including the portion of the property containing the easement area reserved by Mr. Fields when he first sold the larger 320-acre property in 1990. The Grant Deed to the United States apparently did not include any reference to Mr. Fields' easement rights whatsoever.

At some point thereafter, the Morongo Tribe constructed a guard gate and barriers across the entirety of Fields Road, including Mr. Fields' easement area and the public portion of that road, now located in the City of Banning. The Morongo Tribe currently staffs the gate twenty-four hours a day, seven days a week, and refuses to allow members of the public free access to and from all property north of the gates. As a result of the Morongo Tribe's illegal obstructions across Fields Road, Mr. Fields' access to his 40-acre property is subject to tribal control. That prevents development of Mr. Fields' property and subjects it to a forced sale to the Tribe at a price far below what its fair market value would be if it were not blockaded. The same is true for at least four other property owners in the Banning area. In addition, Mr. Fields is unable to exercise his easement rights on the easterly 20 feet of the 280-acre property, which he specifically reserved when he sold the property but which were apparently not included by the Tribe in its subsequent transfer of land to the United States Government.

In recognition of the Morongo Tribe's sovereign immunity, Mr. Fields turned to the City of Banning for help. Despite multiple requests spanning a period of years, the City of Banning refused to take any action to remove the guard shack and barriers from the public portion of Fields Road. So in 2011, Mr. Fields filed a lawsuit against the City to force it to remove the guard shack and barriers. But the court ruled that Mr. Fields could not pursue his claims against the City because the Morongo Tribe is a "necessary and indispensable" party. And, because Mr. Fields cannot sue the Morongo Tribe directly, due to its sovereign immunity, at least according to the trial court, Mr. Fields is effectively left without a remedy.

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As Mr. Fields' story demonstrates, it is imperative that local agencies retain the ability to object to the transfer of land to the United States to hold in trust for any Tribe. If the City of Banning, or any other agency, had objected to the Morongo Tribe's 2004 fee-to-trust transfer, because it did not include any provision requiring the Morongo Tribe to respect the rights of adjacent property owners, then it is entirely possible that neither Mr. Fields nor the other four damaged property owners would be in their current situations. Indeed, because the courthouse doors are effectively closed to them, due to the Tribes' sovereign immunity, both Mr. Fields and other property owners across the State rely solely on the government's ability to protect them. In this case, the government has failed Mr. Fields and the other property owners. But SB 162, which removes in blanket form and without exception the government's ability to object to any fee-to-trust transfer, would completely eliminate the government's ability to ever help property owners. It is simply too broad to constitute sound public policy. Although Tribes should, as a general matter, be able to transfer property into their trusts, it is imperative that local agencies retain the power to object to such transfers as a "check" to ensure that responsible citizens, like Mr. Fields, do not have their rights stripped away arbitrarily and without compensation.

For all these reasons, Mr. Fields respectfully objects to SB 162. Local agencies should continue to be permitted to oppose the inclusion of property within a Tribe's trust, in appropriate cases such as Mr. Fields'. Should you require additional information regarding Mr. Fields' experience with the Morongo Tribe or his litigation against the City of Banning, please do not hesitate to contact me.

Mr. Fields wishes to thank you for your time and consideration.

Very truly yours,



K. Erik Friess

KEF:nc

cc: Eric Johnson, Chief Analyst for SB 162 Committee (via email eric.johnson@asm.ca.gov)