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AN APPEAL BEFORE THE ASSISTANT SECRETARY OF INDIAN AFFAIRS – UNITED STATES DEPARTMENT OF THE INTERIOR

BRIAN KRAMER AND SUZANNE KRAMER, COUNTY OF SANTA BARBARA, CALIFORNIA, NO MORE SLOTS, LEWIS P. GEYSER AND ROBERT B. CORLETT, PRESERVATION OF LOS OLIVOS, SANTA YNEZ VALLEY CONCERNED CITIZENS, ANNE (NANCY) CRAWFORD-HALL and SANTA YNEZ VALLEY ALLIANCE, APPELLANTS v. PACIFIC REGIONAL DIRECTOR, BUREAU OF INDIAN AFFAIRS, APPELLEE.	Docket No: _____ **APPELLANTS NO MORE SLOTS OPENING BRIEF**

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I. INTRODUCTION

This is an appeal of the decision of the Pacific Regional Director of the Bureau of Indian Affairs [B.I.A.] to take 1,427 acres, more or less, of private fee owned lands owned by the Santa Ynez Band of Mission Indians, into federal Indian trust status and is submitted to the Assistant Secretary of Indian Affairs instead of the Internal Bureau of Indian Affairs [I.B.I.A.] because the Assistant Secretary issued a directive that all appeals of fee to trust land transfers involving more than 200 acres were to be taken to the Offices of the Assistant Secretary of Indian Affairs.

JURISDICTION AND STANDING

The Appellants No More Slots is an unincorporated community Association of citizens and residents of the Santa Ynez Valley impacted negatively by the unmitigated impacts affecting them and their quality of life by the transfers of fee owned lands, including the 1,427 acre Camp 4 land transfer, into federal Indian Trust status. See *Preservation of Los Olivos v. U.S. Department of Interior* [C.D. Cal. 2008] 635 F.Supp.2d 1076, 1090. See also *Patchak v. Salazar* 537 U.S. ____ 132 S.Ct. 2199 [2012], *Lujan v. Defenders of Wildlife* 504 U.S. 55 [1992] and also *County of Amador v. Salazar* [D.C. Circ. 2011] 640 F.3d 1150.

SUMMARY OF RELEVANT FACTS AND PRIOR PROCEEDINGS

A small group of mixed race Indian descendants resided in the Santa Ynez Valley and were living on and occupying two parcels of land with the permission and consent of the Archdiocese of the Catholic Church and the Mission at Santa Ynez, California.

The land was originally part of a 35,500 acre grant from Spain. Mexico fought a war of Independence from Spain between 1810 and 1821. At the conclusion of that war, Spain ceded the area of Alta California[1] and other territories in the southwest to Mexico. The Mexican government ruled Alta California during which they made land grants and in some cases ratified or affirmed grants previously made by Spain.

In 1834 the Mexican government secularized the 21 missions and their land holdings. In many cases the lands and missions were seized and the lands sold off or granted to wealthy rancheros, family members and Mexican officials.

In 1846 war broke out between the United States and Mexico. That war ended in 1848 with the Treaty of Guadalupe Hidalgo. By the terms of that treaty the United States paid Mexico fifteen million dollars [$15,000,000] for Alta California and other southwestern territories. The United States agreed to recognize prior Mexican and Spanish land grants.

[1] What is now the State of California.

The territory of California was the object of many who came because of the discovery of gold in 1849. On 9 Sept. 1851 California was admitted to the United States as the 31st state.

In 1851 Congress enacted the Private Land Claims Settlement Act to establish the validity of any prior Mexican and Spanish Land Grants.

Archbishop J.S. Alemany presented a claim for the 35,500 acre land grant on behalf of the Catholic Archdiocese. That grant was named the Canada de los Pinos or more commonly the College Tract. That claim was accepted and uncontested and ratified by a directive from President Abraham Lincoln in 1865. The grant had been divided into two tracts with approximately 11,500 acres assigned to the Archdiocese of Los Angeles, the other parcel to the Catholic Diocese at Monterey.

The Catholic Archdiocese made an agreement with the small group of Indians they called the Zanja Cota Indians permitting them to live on the two parcels of land adjacent to Zanja Cota Creek near the town of Santa Ynez.

On or about 1899 the Catholic church had to bring a lawsuit in Santa Barbara County Superior court against all of the known individual Indian occupants of those small parcels of land because of claims circulating that some Indians claimed an ownership interest in the College Tract.

Each individual Indian was named as a Defendant because there was no organized or recognized tribe.

The interests of those Indians was represented by Lucius Wright, the U.S. Indian agent from the Tule River Agency near Bakersfield.

In 1901 agent Wright negotiated an agreement with the Santa Ynez Land and Improvement Company who owned the 25 acre parcel. The agreement provided the original five families of neophytes from the Mission Santa Ynez could permanently occupy, use and reside on that 25 acre parcel including rights to adequate water for domestic uses. In the event these Indians abandoned that land or there were no living descendants in the future, the land would revert back to the Company. Title to the land was to be conveyed to the United States in trust as a permanent reservation for those five families. That agreement was executed and approved in 1903.

In 1906 a judgment was entered quieting title to the entire 11,500 acre College Tract in the Catholic Church. In connection with that judgment, agent Wright negotiated an agreement (indenture) by which many of the named Indian Defendants could remain on the 75 acre parcel west of the creek, reside there and use that land with water for domestic use. Like the earlier agreement between the land company and the original five families, in the event that land was abandoned or there were no living descendants of

the named defendants, that 75 acre parcel would revert back to the Catholic Archdiocese.

From time to time in years following the judgment, the Church sold off parcels of the College Tract to other private owners.

On or about 1938 the Catholic Church executed a quit claim deed to the 75 acre parcel to the United States, conveying the encumbered title they held to be used for the benefit of the group of Indians residing there. At or about the same time the owners of the 25 acre parcel who were successors to the land company, executed a quit claim deed to the United States for whatever interest they still had in that parcel for the benefit of the original five Indian families and their descendants as provided for in the 1903 agreement.

Neither of these two parcels of land were ever taken into trust under the IRA, 25 USC 465.

In 2010 the Santa Ynez Band of Mission Indians purchased some 1,427 acres of the original 11,500 acre College grant from their predecessor in title, Fess Parker, who had purchased that parcel, commonly referred to as Camp 4. At the time of purchase the land was encumbered by a Williamson Act land conservation contract. That land is not now, and never was a part of any Indian reservation.

The 135 member Santa Ynez Band seeks to transfer that "off-reservation" fee land into federal Indian trust status

and has obtained approval of that fee to trust transfer from the Pacific Regional Office of the B.I.A. It is one of three applications now pending for transfer of fee properties owned by the Band into trust in the area and they currently own over 20 real properties in the area with holdings currently valued at over two hundred million dollars [$200,000,000]. They are also operating a large successful gambling casino and other commercial properties generating annual income between $150,000,000 and $200,000,000 million dollars.

Each of the 135 tribal members receive an annual per capita income of over $600,000 dollars from profits and most own homes and second homes in and out of this area, some even live out of state.

It is from the decision of the Pacific Regional Director to transfer this 1,427 acre Camp 4 fee land into federal Indian trust that this appeal arises.

V. ARGUMENTS

A. The decision of the Pacific Regional Director of the B.I.A. to take the 1,427 acres of Camp 4 land into trust was based on erroneous assumptions of facts and the failure of the Director to apply the correct legal standards and analysis for a lawful transfer of privately owned fee lands into federal Indian trust status, pursuant to the Indian Reorganization Act, 25 United States Code 465.

As set out in the summary of relevant facts and applicable law, the Camp 4 land is not now and never was an Indian reservation nor was any of the Catholic Church's 11,500 acre land grant within which the Camp 4 property is located. That land is privately owned fee land granted to the Catholic Church Archdiocese well before 1850 and confirmed to them after California became a state on 9 September 1851, by the United States Land Claims Commission and also confirmed later by the executive order of President Abraham Lincoln on 18 March 1865.

Whenever an Indian tribe or Band purchases fee lands they own that property as if it were just like any non-Indian land owner and no sovereign status applies or attaches to that land. *City of Sherrill New York v. Oneida Indian Nation of New York*, 544 U.S. 197 (2005). An Indian tribe must abide by all the same laws and rules that would apply to such land if owned by any non-Indian land owner.

As set out in the 2008 Memorandum to all Regional B.I.A. Directors from Carl Artman concerning fee to trust transfers (EXHIBIT "A" in the Appendix) the only time an Indian tribe is required to transfer land they own into trust is if and when they intend to utilize that land for gaming activities. Otherwise, it is entirely consistent with the Indian Reorganization Act (IRA) that the tribe develop that land in the same manner as any non-Indian developer. That is, because the IRA was intended to make Indian tribes

self-sufficient and put them on the same equal status as non-Indian land owners.

It is undisputed the Camp 4 land is not now and never was an Indian reservation. The standard to determine if it can be transferred into trust is set out in 25 C.F.R. part 151.11 as an "off-reservation" land acquisition applying all the criteria in 25 C.F.R. 151.11 and those incorporated from 25 C.F.R. 151.10, and including the limitations on the transfer of lands into trust with encumbrances on the title, as set out in 36 C.F.R. part 254.15(a) and (c) (sub. 1i).

The Pacific Regional Director Amy Dutschke never rescinded her improper classification of the College Tract of land owned by the Catholic Church as an Indian Land Consolidation Area. [Attached EXHIBIT "B".]

The Indian Land Consolidation Act (25 U.S.C. 2203 through 2216) was enacted to provide for the restoration and consolidation of parcels of land within the boundaries of a known identified reservation or a previously existing reservation resulting from effects of the Indian Land Allotment Act. Allotments made were often followed by sales, transfers and inheritances of parcels of land inside of reservation boundaries, producing "checkerboard" parcels owned by others. That effectively removed that land from the jurisdiction and control of the tribe on whose reservation it once was a part of. Because of the Regional Director's Land consolidation Act (ILCA) analysis the standards of 25

C.F.R. 151.10 for lands within an ILCA were used instead of the more stringent standards required for "off-reservation" lands provided for in 25 C.F.R. 151.11 which are **NOT** within any land consolidation area.

25 C.F.R. 151.11 requires the submission of a detailed business plan for any proposed economic development and a showing of how that economic development will benefit the tribe as well as how it will impact the local community and local government. That detailed business plan must address how the fee to trust transfer will provide all of the public services and public infrastructure serving the land and any development on it once it is in trust. Such a detailed statement must include not only mitigation of impacts but also resolution of jurisdictional conflicts and the payment of fees in lieu of taxes because taxes cannot be assessed by local government once that land is transferred into federal Indian trust.

The fee to trust application and decision for the camp 4 property contains no such detailed business plan and discussion of impacts and jurisdictional conflicts, let alone any proposed mitigation measures to resolve these important issues. As discussed *infra*, that failure deprived the community, the nearby property owners and local governments of their constitutional rights to due process of law.

The proposed Camp 4 trust land is further encumbered by covenants, conditions and restrictions on future uses by the terms of the judgment entered in 1906 Quieting Title in the Catholic Archdiocese. That judgment provides among other things:

> "---neither the Said Band of Village of Mission Indians known as Santa Ynez Indians nor any present or future member thereof nor any of said defendants Salmon Cota (and others named) has or have any estate, right title or interest whatsoever in or to said two parcels of land last above described or either of them or in the waters of the Zanja Cota Creek or Cota Creek or any part thereof and that said Band or Village of Mission Indians known as the Santa Ynez Indians and all the present and future members thereof and said defendants and all and every of them be and hereby further enjoined, restrained and debarred from making or asserting in any way any claim whatever adverse to said plaintiff in or said last two described parcels of land or either of them or in or to any part thereof or either of them or to or in the water of said Zanja Cota Creek or Cota creek or to any part thereof."

Those covenants, restrictions and conditions were recorded on title and constitute a binding obligation running with the land, upon all assigns and successors in interest. [Santa Barbara Superior Court case no. 3926.]

Also that Camp 4 land is further encumbered by a Williamson Act contract and restriction which limitations prevent the very type of subdivision development the Santa Ynez band has asserted they intend to develop once the land is in trust. See EXHIBIT "C" in the Appendix filed concurrently herewith.

The true motives for bringing land into trust were discussed and revealed in a tribal Council meeting. A copy of the relevant discussion in minutes of that meeting are attached hereto as EXHIBIT "D" in the Appendix. That it was to evade all the rules and development regulations of the County of Santa Barbara and the property taxes that would normally be assessed for public services and infrastructure provided by the County. There is **NO** mention of any need for housing. Although the tribal government has publically stated the reasons for bringing the Camp 4 land into trust is to provide additional housing for their 135 members, they have had plans to do much different developments on that land. Attached EXHIBIT "E" are discussions for building a second casino and golf course on only one half of the Camp 4 land and another plan where they discussed building 500 houses of 3,000 square foot each to be sold at market rates of about one million dollars each to the general public using long term land leases of the tribal trust lands once the property is transferred into trust. Again there is no mention of a need for tribal housing.

Under current federal law and the practices and policies of the Department of Interior and B.I.A. any agreement, representation or promise made by any Indian tribe concerning uses intended or any future uses of that land to be transferred into trust, will not be enforced. If a tribe decides to develop the land differently once it is

in trust nothing can be done. [See the attached EXHIBIT "F".] The only way it could be removed from that trust status would be by an express Act of Congress even though the tribe breached any promises made or agreement entered into before the land was put in trust.

As set out in the Artman memorandum, EXHIBIT "A", there is no reason why this wealthy and very prosperous Band of Santa Ynez Indians cannot build housing and develop land they own suitable for any purported housing needs, in the same manner as any other housing developer.

The proposed transfer into trust by the Pacific Regional Director for this Camp 4 property was and is improper, illegal, arbitrary, capricious and contrary to law for all the reasons set out herein and in all the other appeals of that erroneous decision that have been and will be submitted by the other Appellants.

B. The Santa Ynez Band of Mission Indians is not eligible to transfer any private fee lands into trust using the authority of the Indian Reorganization Act (IRA) 25 U.S.C. 465 *et.seq.* because the community of mixed race Indian descendants that occupied the lands within the College Tract owned by the Catholic Archdiocese near Santa Ynez, were not under the jurisdiction and control of the Federal Government on or before 18 June 1934.

In the years following the colonization of Alta California the Spanish government granted the Catholic Archdiocese a tract of land called *Canada de los Pinos*, commonly called the College Tract. This grant was later confirmed by the United States.

On April 25th 1846 war broke out between the United States and Mexico. In 1848 that war ended by the terms of the *Treaty of Guadalupe Hidalgo.* The United States purchased all of California and other Southwest territories for fifteen million dollars ($15,000,000) and other considerations. In that treaty the United States agreed to honor pre-existing land grants.

California territory became the 31st state of the United States on 9 September 1850. Shortly thereafter in 1851 the United States validated land claims based on previous Spanish and Mexican land grants. Archbishop J.S. Alemany submitted a claim based on the grant of the 35,500 acre College Tract. That claim was ultimately and permanently approved by the Lands Claims Commission and a proclamation issued by President Abraham Lincoln on 18 March 1865.

The Catholic Church entered into an agreement with the group of mixed race Indian descendants living near the Mission to permit them to continue to live, occupy and use 2 tracts of land within the College grant, one parcel of approximately 25 acres west of Zanja Cota Creek and one

parcel of approximately 75 acres just east of the creek and near the township of Santa Ynez.

These Indians were referred to as the Zanja Cota Indians (alternatively spelled Sanja Cota) and often referred to as the Indians at Santa Ynez or just the Santa Ynez Indians. They were not an organized tribe but a mere community living near each other consisting of 5 original families of Neophytes and other Indians some who were stragglers sent to Santa Ynez by the Tule River agency.

In 1864 Congress enacted the "California 4 reservation Act" creating 4 reservations. They were the Hoopa/Klamath Indian reservation, Smith River Reservation, Mendocino Reservation and the Mission reservation. This last reservation had no specified boundary. Subsequent case law empowered the president to set aside additional lands for California Indians by special presidential decree. See for example *U.S. v. Celestine*, 215 U.S. 278 (1909) and also *Donnely v. United States* 228 U.S. 243 (1913). These land set aside orders were sometimes called "Executive Reservations", see *Sioux Tribe v. United States*, 316 U.S. 317 (1942).

In 1871 Congress enacted the Indian Appropriations Act prohibiting further treaties and creation of treaty reservations. It also prohibited Indian tribes from being referred to or acknowledged as "Sovereign Nations."

During the period from 1865 to 1890 the Catholic Church assisted these Indians at Santa Ynez with construction of

water supplies, housing and the planting and harvesting of crops.

Several Commissions were established to look into the plight of California Indians and determine their needs. In the southern part of the state one such commission, was the three member Smiley Commission. The Smiley Commission was tasked with contacting all known Indian communities, groups and villages in Southern California to determine their needs for a land base and the commission's recommendations would form the basis of Congressional authority under the Mission Indian Relief Act of 1891, to approve land set asides made by order of the President of the United States.

That Commission contacted the small group of Indians at Santa Ynez. After inspecting their living accommodations and talking with members of this unorganized group or village, the Commission found no need to set aside any land for them as they were more than adequately provided for by their agreement with the Catholic Church, which the Commission concluded was better than that which the Commission was empowered to deliver on behalf of the United States government. Consequently no Presidential set aside of land was made. A copy of the relevant portions of the Smiley Commission report are attached hereto as EXHIBIT "G" in the Appendix.

Following the visit from the Smiley Commission some members of the Indian community began claiming they had

ownership rights to the 11,500 acre College Tract of land belonging to the Catholic Church. As a result in 1899 the Church filed a Quiet Title lawsuit against the Indian occupants of the two small parcels within that tract adjacent to Zanja Cota Creek where they were living with the permission of the Church near Santa Ynez. Lucius Wright, the U.S. representative and Indian agent from the Tule river Indian agency began efforts to formalize a permanent solution. In 1901 he was able to negotiate an agreement on behalf of the five families residing on the 25 acre parcel of land so those original 5 families could have the permanent exclusive right to use and occupy that 25 acre parcel of land west of Zanja Cota Creek, apart from the 75 acre parcel of land east of the Creek.

That agreement also provided the rights to use a limited amount of water for domestic purposes and also provided that in the event these five families abandoned that land or if there were no longer any surviving members of those families then the land would revert back to the owner, the Santa Ynez Land and Improvement company. It also provided that title to that land would be conveyed to the United States in trust for those original 5 families and their descendants thus creating what would be a permanent reservation for these five families on that land. That agreement was executed in 1903 by the principals of the

company and Indian Agent Lucius Wright by and for the affected Indian families and the United States.

In 1906 the Quiet Title lawsuit over title to the 11,500 acre College Tract was concluded with the court entering judgment quieting title to the entire tract of land in the Catholic Church exclusively against the many named Indian defendants and the U.S. Indian Agent Lucius Wright.

The Santa Ynez band presented no claim for any preexisting rights from the Mexican government and are long ago precluded from making such a claim. See the recent case of *The Kawaiisu Tribe of Tejon, David Laughing Horse Robinson v. Sally Jewell, et.al.* ___F.3d___ (9th Circuit 1 July 2015).

As part of the settlement of that suit, the Catholic Church agreed to a similar arrangement as had been negotiated earlier for the original 5 families by Indian Agent Wright. He did so again on behalf of the individual Indian defendants in that lawsuit. By the terms of that agreement (Indenture) the named Indian defendants could remain living on and occupying the approximately 75 acre parcel of land just east of Zanja Cota Creek to reside on and use and take such amounts of water for domestic uses as they had previously used and with no right to purvey water to anyone else. The covenants, restrictions and conditions were made binding upon all successors and assigns and the agreement provided in the event that these named Indian

defendants abandoned the land or if they or their descendants were no longer living, then the land would revert back to the owner, the Catholic Archdiocese.

After that case was concluded and judgment entered the Indians continued to live on and occupy that 75 acre parcel of land. In 1938 the Catholic Archdiocese executed a Quit Claim deed to the United States conveying whatever remaining interest they had in that 75 acre parcel to the United States to be used for the benefit of the Indians. The covenants running with the land created by the 1906 judgment ***were not extinguished***. The Santa Ynez Land and Improvement Company executed a similar Quit Claim deed for the 25 acre parcel they had conveyed in 1903 by the terms of the 1903 agreement granting the five families a right to use and occupy that land in perpetuity.

During the period from 1865 until 1934 the small village or community of Indians at Santa Ynez were not an Indian tribe and displayed none of the incidents of a tribe and tribal government. In the very recent case of *Muwekma Ohlone Indian Tribe v. Salazar*, 708 F.3d. 209 (2014), the court held it is not enough for a small group, community or village of Indians living together in the same location to constitute an **Indian "tribe"** even if there are occasional contacts with the federal government and some benefits and services provided to them from the Federal government.

To constitute a bona fide Indian ***"tribe"*** the community or village of Indians must be homogeneous, not an unrelated mix of Indian descendants and non-Indians and must have had a continuously functioning internal tribal government structure dating back to the first contacts with non-Indians. In addition this continuously functioning tribal government must have had a continuous external government to government relationship with the federal government at least since 1900. These criteria were required to establish a *bona fide* Indian tribe.

There is no evidence these mandatory criteria were in existence amongst the Indian community at Santa Ynez between 1865 and 1934. As late as 1928 the B.I.A. and U.S. Department of Interior classified these Indians at Santa Ynez as mostly Shoshone or of Shoshone descent and Mexican ancestry. See EXHIBIT "H" in the Appendix.

In 1934 Congress enacted the Indian Reorganization Act, 25 U.S.C. 465 *et.seq.* (hereafter IRA). When enacted the B.I.A. sent out agents who contacted any and all groups, communities, families and villages of Indians known to exist somewhere in California, some with only 3 or 4 family members. They were asked if they wanted to vote for or against the Act and seek to organize or re-organize as a federally acknowledged Indian tribe and receive benefits and services available to Indian tribes. No effort was made to

determine the status of Indians prior to being offered the right to vote for participation in the IRA.

Once a favorable vote occurred then the group was to make application to the Secretary of Interior for federal acknowledgement, submit an application and initial base roll of membership. In addition the group was to submit a proposed Constitution or governing documents that at least one-third of the identified members on the base roll voted in favor of that proposed Constitution.

All of this documentation was then to be submitted for the approval or rejection of the Secretary of Interior. It was during this period the legitimate existence of a tribe and tribal government, using agency criteria and investigation, would be determined. If and when the acknowledgement was approved that approval was recorded in the federal register. Due to abuses, irregularity and arbitrariness as well as negligence and corruption in this vetting process, the statutory 25 C.F.R. part 83 process was developed including the mandatory acknowledgement criteria set out and codified in 25 C.F.R. 87.3.

Following the vote of the community at Santa Ynez they did not apply for recognition and acknowledgement and did not submit a Constitution until 1964, some 30 years later. The Santa Ynez Band of Mission Indians was not formally acknowledged until their name appeared on the 25 C.F.R. part 83 list of tribes in 1979. There is no evidence to what

extent any effort was made by the B.I.A. to verify their lawful or *bona fide* existence as an Indian tribe prior to the acceptance of their Constitution in 1964 and their name being placed on the list.

In 2009 the Supreme Court decided the case of *Carcieri v. Salazar*, 555 U.S. 379 (2009). In that case the court held that any Indian tribe seeking to have land transferred into federal Indian trust status under the authority of the Indian Reorganization Act, 25 U.S.C. 465, then that tribe must have been under the jurisdiction and control of the B.I.A. on or before 18 June 1934 when that law was enacted. The Pacific Regional Director avoided this legal requirement by claiming she relied upon the opinion of the Solicitor for the B.I.A. who opined, that any Indians who were just offered the right to vote to seek reorganization under the IRA were necessarily under the jurisdiction and control of the B.I.A.

This argument is unsupported and is a "bootstrap argument". To conclude that anyone offered the right to vote to try to organize or reorganize an Indian tribe after 18 June 1934 means they were already a tribe in existence and under federal jurisdiction on or before 18 June 1934 when the IRA was enacted is absurd. The whole point of the law was to provide a means for any group that could establish a prior *bona fide* tribal existence that was extinguished prior to 18 June 1934, were then being offered an opportunity to

reorganize that tribe as a political entity. That was necessary because by the provisions of the Indian Allotment Act (Dawes Act) of 1887, which provided lands of existing and recognized tribes were divided up at the direction of the President or executive agencies. When divided they were allotted to the individual tribal members or families. When that allotment process was complete the tribe as a governmental and political entity ceased to exist.

The Santa Ynez Band of Mission Indians was not a tribe in existence on or before 18 June 1934. As a result the Secretary and the Regional Director had no power and authority to transfer any land from private fee ownership into Indian trust status for the Santa Ynez Band of Mission Indians.

Moreover the Santa Ynez Band changed their name in 2002 to "The Santa Ynez Band of Chumash Indians" or alternatively "The Santa Ynez Band of Chumash Mission Indians." The inclusion of the name Chumash, and representations made publically that "they were the ***only*** Chumash Indian tribe in California" is unsupported by the facts and historical research. [See attached EXHIBIT "J".]

C. <u>The process used by the Pacific Regional Director to evaluate the approval or transfers of Indian owned fee lands into federal Indian trust status is biased, improper and tainted by blatant conflict of interests and the use of a</u>

"consortium agreement" that provides that the Indian tribes seeking to put land into trust would pay the salary of the B.I.A. Pacific Regional staff whose duty it is to evaluate the fee to trust application and 25 C.F.R. parts 151.10, 151.11 criteria. This consortium agreement provides the tribal participants are involved in the hiring and firing of the B.I.A. employees including their regular personnel performance evaluations, and can award employees doing a "good job" with what is called a "star bonus." This process was so infamous it is described in a Loyola Law School article as an example of extreme "Rubber Stamping".

A copy of the consortium agreement (heavily redacted) and the solicitor's evaluation of the practice is attached hereto, as EXHIBIT "I" and incorporated herein by that reference.

Having B.I.A. employees, paid, supervised, and whose performance is graded and rewarded or punished by the very Indian tribe whose application for transfer of fee land to trust they are evaluating, is a blatant conflict of interest, which denies the citizens, the community and local government due process of law established by 25 U.S.C. sections 465 *et.seq.* and 25 C.F.R. parts 151.10 and 151.11 and the 4th and 14th Amendments to the U.S. Constitution.

The fee to trust evaluations and approval practices of the Pacific Regional Offices of the B.I.A. were so biased and erroneous as to be described as "EXTREME RUBBER

STAMPING" [See 40 Pepperdine L.R. Vol. 1] in which it is pointed out these applications are never denied. Most likely this is a result of bias and the conflicts of interest created by the purported "Consortium Agreements."

The group of Indians at Santa Ynez did not apply or seek acknowledgement as a tribe after the 1934 vote. They did not submit a Constitution and tribal governance documents until 1964 and were not federally acknowledged as an Indian tribe until 1979.

There is no evidence that they were under the jurisdiction of the B.I.A. on or before 18 June 1934 as set out in *Carcieri v. Salazar supra* and, are not entitled to transfer land into trust under the I.R.A.

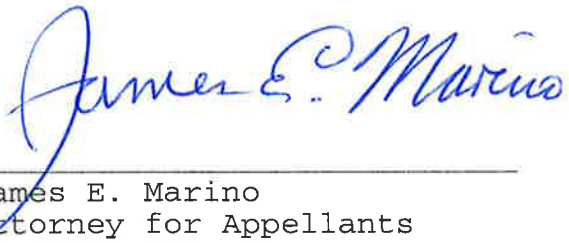
The recommendation that this fee to trust transfer be approved and the Pacific Regional Director's acceptance of that land into trust is a result of this erroneous and biased evaluation process and a patent conflict of interest and should be vacated and rescinded forthwith.

CONCLUSION

For all the reasons set out herein the proposed fee to trust transfer of the 1,427 acre Camp 4 land should be denied and rescinded. Appellants No More Slots also join in the appeal of others based upon the failure to require an environmental impact statement and other environmental deficiencies and the unconstitutional procedure to transfer

private owned fee land into trust under the claimed authority to do so by using the Indian Reorganization Act with no established limits or parameters to that poorly defined power.

Respectfully submitted,



James E. Marino
Attorney for Appellants
NO MORE SLOTS

EXHIBIT "A"

The Memorandum Directive of Assistant Secretary Carl Artman To All Regional Directors Concerning the Standards to Use In Evaluating Fee to Trust Transfers Of Land For Acknowledged Indian Tribes

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

TAKE PRIDE IN AMERICA

Memorandum

To: Regional Directors, Bureau of Indian Affairs
George Skibine, Office of Indian Gaming

From: Assistant Secretary Carl Artman

Date: January 3, 2008

Subject: Guidance on taking off-reservation land into trust for gaming purposes

The Department currently has pending 30 applications from Indian tribes to take off-reservation land into trust for gaming purposes as part of the 25 U.S.C. § 2719(b)(1)(A) two-part determination. Many of the applications involve land that is a considerable distance from the reservation of the applicant tribe; for example, one involves land that is 1400 miles from the tribe's reservation. Processing these applications is time-consuming and resource-intensive in an area that is constrained by a large backlog and limited human resources.

The decision whether to take land into trust, either on-reservation or off-reservation, is discretionary with the Secretary. Section 151.11 of 25 C.F.R. Part 151 sets forth the factors the Department will consider when exercising this discretionary authority with respect to "tribal requests for the acquisition of lands in trust status, when the land is located outside of and noncontiguous to the tribe's reservation." Section 151.11(b) contains two provisions of particular relevance to applications that involve land that is a considerable distance from the reservation. It states that, as the distance between the tribe's reservation and the land to be acquired increases, the Secretary shall give:

1) greater scrutiny to the tribe's justification of anticipated benefits from the acquisition; and

2) greater weight to concerns raised by state and local governments as to the acquisition's potential impacts on regulatory jurisdiction, real property taxes and special assessments.

Part 151, however, does not further elaborate on how or why the Department is to give "greater scrutiny" and "greater weight" to these factors as the distance increases. The purpose of this guidance is to clarify how those terms are to be interpreted and applied,

particularly when considering the taking of off-reservation land into trust status for gaming purposes.

Core Principles

As background to the specific guidance that follows, it is important to restate the core principles that underlie the Part 151 regulations and that should inform the Department's interpretation of, and decisions under, those regulations. The Part 151 regulations implement the trust land acquisition authority given to the Secretary by the Indian Reorganization Act of 1934 (IRA), 25 U.S.C. § 465. The IRA was primarily intended to redress the effects of the discredited policy of allotment, which had sought to divide up the tribal land base among individual Indians and non-Indians, and to destroy tribal governments and tribal identity. To assist in restoring the tribal land base, the IRA gives the Secretary the authority to: 1) return "to tribal ownership the remaining surplus lands of any Indian reservation" that had been opened to sale or disposal under the public land laws; 2) consolidate Indian ownership of land holdings within reservations by acquiring and exchanging interests of both Indians and non-Indians; and 3) acquire, in his discretion, interests in lands "within or without existing reservations". The IRA contains also provisions strengthening tribal governments and facilitating their operation. The policy of the IRA, which was just the opposite of allotment, is to provide a tribal land base on which tribal communities, governed by tribal governments, could exist and flourish. Consistent with the policy, the Secretary has typically exercised discretion regarding trust land acquisition authority to take lands into trust that are within, or in close proximity to, existing reservations.

The IRA has nothing directly to do with Indian gaming. The Indian Gaming Regulatory Act of 1988 (IGRA), 25 U.S.C. § 2701 et seq., adopted more than 50 years after the IRA, sets the parameters of Indian gaming. One requirement is that if gaming is to occur on off-reservation lands those lands must be trust lands "over which an Indian tribe exercises governmental power." The authority to acquire trust lands, however, is derived from the IRA; no trust land acquisition authority is granted to the Secretary by IGRA. The Department has taken the position that although IGRA was intended to promote the economic development of tribes by facilitating Indian gaming operations, it was not intended to encourage the establishment of Indian gaming facilities far from existing reservations. Whether land should be taken into trust far from existing reservations for gaming purposes is a decision that must be made pursuant to the Secretary's IRA authority.

Implementation of Guidance

This guidance should be implemented as follows:

1. All pending applications or those received in the future should be initially reviewed in accordance with this guidance. The initial review should precede any effort (if it is not already underway) to comply with the NEPA requirements of section 151.10(h).

2. If the initial review reveals that the application fails to address, or does not adequately address, the issues identified in this guidance, the application should be denied and the tribe promptly informed. This denial does not preclude the tribe from applying for future off-reservation acquisitions for gaming or other purposes. However, those future applications will be subject to these same guidelines.

3. A greater scrutiny of the justification of the anticipated benefits and the giving greater weight to the local concerns must still be given to all off-reservation land into trust applications, as required in 25 C.F.R. § 151.11(b). This memorandum does not diminish that responsibility, but only provides guidance for those applications that exceed a daily commutable distance from the reservation.

Greater Scrutiny of Anticipated Benefits

The guidance in this section applies to all applications, pending or yet to be received, that involve requests to take land into trust that is off-reservation. Reviewers must, in accordance with the regulations at 25 C.F.R. 151.11(b), "give greater scrutiny to the tribe's justification of anticipated benefits from the acquisition" as the distance between the acquisition and the tribe's reservation increases. The reviewer should apply this greater scrutiny as long as the requested acquisition is off-reservation regardless of the mileage between the tribe's reservation and proposed acquisition. If the proposed acquisition exceeds a commutable distance from the reservation the reviewer, at a minimum, should answer the questions listed below to help determine the benefits to the tribe. A commutable distance is considered to be the distance a reservation resident could reasonably commute on a regular basis to work at a tribal gaming facility located off-reservation

As noted above, section 151.11(b) requires the Secretary to "give greater scrutiny to the tribe's justification of anticipated benefits from the acquisition" of trust land "as the distance between the tribe's reservation and the land to be acquired increases." The reason for this requirement is that, as a general principle, the farther the economic enterprise - in this case, a gaming facility - is from the reservation, the greater the potential for significant negative consequences on reservation life.

Tribes typically view off-reservation gaming facilities as providing two economic benefits to the tribe. The first is the income stream from the gaming facility, which can be used to fund tribal services, develop tribal infrastructure, and provide per capita payments to tribal members, and thus can have a positive effect on reservation life. Obviously, the income stream from a gaming facility is not likely to decrease as the distance from the reservation increases. In fact, off-reservation sites are often selected for gaming facilities because they provide better markets for gaming and potentially greater income streams than sites on or close to the reservation.

The second benefit of off-reservation gaming facilities is the opportunity for job training and employment of tribal members. With respect to this benefit, the location of the

gaming facility can have significant negative effects on reservation life that potentially worsen as the distance increases. If the gaming facility is not within a commutable distance of the reservation, tribal members who are residents of the reservation will either: a) not be able to take advantage of the job opportunities if they desire to remain on the reservation; or b) be forced to move away from the reservation to take advantage of the job opportunity.

In either case, the negative impacts on reservation life could be considerable. In the first case, the operation of the gaming facility would not directly improve the employment rate of tribal members living on the reservation. High on-reservation unemployment rates, with their attendant social ills, are already a serious problem on many reservations. A gaming operation on or close to the reservation allows the tribe to alleviate this situation by using their gaming facility as a conduit for job training and employment programs for tribal members. Provision of employment opportunities to reservation residents promotes a strong tribal government and tribal community. Employment of tribal members is an important benefit of tribal economic enterprises.

In the second case, the existence of the off-reservation facility would require or encourage reservation residents to leave the reservation for an extended period to take advantage of the job opportunities created by the tribal gaming facility. The departure of a significant number of reservation residents and their families could have serious and far-reaching implications for the remaining tribal community and its continuity as a community. While the financial benefits of the proposed gaming facility might create revenues for the applicant tribe and may mitigate some potential negative impacts, no application to take land into trust beyond a commutable distance from the reservation should be granted unless it carefully and comprehensively analyzes the potential negative impacts on reservation life and clearly demonstrates why these are outweighed by the financial benefits of tribal ownership in a distant gaming facility.

As stated above, some of the issues that need to be addressed in the application if the land is to be taken into trust is off-reservation and for economic development are:

> What is the unemployment rate on the reservation? How will it be affected by the operation of the gaming facility?
>
> How many tribal members (with their dependents) are likely to leave the reservation to seek employment at the gaming facility? How will their departure affect the quality of reservation life?
>
> How will the relocation of reservation residents affect their long-term identification with the tribe and the eligibility of their children and descendants for tribal membership?
>
> What are the specifically identified on-reservation benefits from the proposed gaming facility? Will any of the revenue be used to create on-reservation job opportunities?

As long as it remains the policy of the Federal government to support and encourage growth of reservations governed by tribal governments, these are important questions that must be addressed before decisions about off-reservation trust land acquisitions are made. The Department should not use its IRA authority to acquire land in trust in such a way as to defeat or hinder the purpose of the IRA. It should be noted that tribes are free to pursue a wide variety of off-reservation business enterprises and initiatives without the approval or supervision of the Department. It is only when the enterprises involve the taking of land into trust, as is required for off-reservation Indian gaming facilities, that the Department must exercise its IRA authority.

Greater Weight

Section 151.11(b) also requires the Secretary to give "greater weight" than he might otherwise to the concerns of state and local governments. Under the regulations, state and local governments are to be immediately notified of a tribe's application to take land into trust, and are to file their comments in writing no later than 30 days after receiving notice. The reviewer must give a greater weight to the concerns of the state and local governments no matter what the distance is between the tribe's reservation and the proposed off-reservation acquisition. This is the second part of the two part review required by section 151.11(b).

The regulations identify two sets of state and local concerns that need to be given "greater weight:" 1) jurisdictional problems and potential conflicts of land use; and 2) the removal of the land from the tax rolls. The reason for this requirement of giving "greater weight" is two-fold. First, the farther from the reservation the proposed trust acquisition is, the more the transfer of Indian jurisdiction to that parcel of land is likely to disrupt established governmental patterns. The Department has considerable experience with the problems posed by checkerboard patterns of jurisdiction. Distant local governments are less likely to have experience dealing with and accommodating tribal governments with their unique governmental and regulatory authorities. Second, the farther from the reservation the land acquisition is, the more difficult it will be for the tribal government to efficiently project and exercise its governmental and regulatory powers.

With respect to jurisdictional issues, the application should include copies of any intergovernmental agreements negotiated between the tribe and the state and local governments, or an explanation as to why no such agreements exist. Failure to achieve such agreements should weigh heavily against the approval of the application.

With respect to land use issues, the application should include a comprehensive analysis as to whether the proposed gaming facility is compatible with the current zoning and land use requirements of the state and local governments, and with the uses being made of adjacent or contiguous land, and whether such uses would be negatively impacted by the traffic, noise, and development associated with or generated by the proposed gaming facility. Incompatible uses might consist of adjacent or contiguous land zoned or used for: National Parks, National Monuments, Federally designated conservation areas,

National Fish and Wildlife Refuges, day care centers, schools, churches, or residential developments. If the application does not contain such an analysis, it should be denied.

Conclusion

The Office of Indian Gaming will review the current applications. If an application is denied subsequent to this review, the applicant tribe will be notified immediately. Tribes receiving a denial subsequent to this review may resubmit the application with information that will satisfy the regulations. Regional directors shall use this clarification to guide their recommendations or determinations on future applications to take off-reservation land into trust.

EXHIBIT "B"

The Application of The Santa Ynez Band

To Have the entire 11,500 acres of the College Tract declared to be An Indian Tribal Land Consolidation Area and the Order & Decision of the Pacific Regional Director to Approve that designation.

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Pacific Regional Office
2800 Cottage Way
Sacramento, California 95825

IN REPLY REFER TO:
Real Estate Services

JUN 19 2013

Honorable Vincent Armenta
Chairman, Santa Ynez Band of Chumash Indians
P. O. Box 517
Santa Ynez, CA 93460

Dear Chairman Armenta:

In response to your March 27, 2013 letter, the Tribe's Proposed Land Consolidation & Acquisition Plan has been approved. The Plan was submitted and approved pursuant to 25 CFR §151.2(h) and §151.3(a)(1). Enclosed is an original of the approval along with a copy of the Plan. A copy of the Plan will be retained at this office, and a copy is being provided to the Superintendent, Southern California Agency.

Sincerely,

Acting Regional Director

Enclosures

cc: Superintendent, SCA, w/enclosures

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
PACIFIC REGION

APPROVAL OF PROPOSED LAND CONSOLIDATION & ACQUISITION PLAN SANTA YNEZ BAND OF CHUMASH INDIANS

The within Proposed Land Consolidation & Acquisition Plan, consisting of pages 1 - 9 with Exhibits A and B and Tribal Resolution #926 dated March 27, 2013, is hereby approved pursuant to 25 CFR §151.2(h) and §151.3(a)(1). All acquisition applications submitted pursuant to said plan shall be considered within the Secretary's discretion and under all applicable laws and regulations, including the National Environmental Policy Act of 1969.

Date: 6/17/13

Amy L. Dutschke
Regional Director, Pacific Region
Bureau of Indian Affairs
Sacramento, California

Pursuant to the authority delegated by 209 DM 8, 230 DM 1 and 3 IAM 4

Santa Ynez Band of Chumash Indians

PROPOSED LAND CONSOLIDTION AND ACQUISITION PLAN

March 2013

Purpose and Scope

Pursuant to 25 C.F.R § 151.2(h)[1], the Santa Ynez Band of Chumash Indians ("Santa Ynez" or "Tribe") submits this Proposed Tribal Consolidation and Acquisition Plan ("Plan") for the approval of the authorized representative of the Secretary of the Interior.[2] The Federal Government's land acquisition policy at 25 C.F.R. 151.3(a)(1) specifically contemplates tribal consolidation areas to be akin to both on-reservation and adjacent lands with respect to acquisition for trust purposes. This means that tribal consolidation areas, like on-reservation or adjacent lands, do not require the high level of scrutiny that off-reservation acquisitions do, and further affords such acquisitions a greater level of credibility as part of a plan which has already been reviewed and approved by the BIA.

The purpose of this Plan is to assist the Tribe in acquiring additional lands in order to increase the tribal land base and provide sufficient land for housing, economic development and governmental purposes. The Tribe believes that planning for land acquisitions within the area historically held for the Tribe by the Roman Catholic Church will help the Tribe achieve its goals of providing ample housing and governmental services to its members. In addition, the Tribe has been offered restricted public domain allotments held by individual tribal members or descendents of the original Indian allottees within the Los Padres National Forest. Such lands could be used for mitigation or exchange purposes.

The Tribe's plan includes the geographical area which was the subject of the 1897 Quiet Title Action brought by the Roman Catholic Church (Bishop of Monterey), encompassing approximately 11,500 acres of the College

[1] The intent of this Tribal Consolidation and Acquisition Plan is to meet the provisions of 25 C.F.R. §§ 151.2(h) and 151.3(a)(1). See attached Exhibit A, an IBIA case that addresses this provision. The IBIA found that the Regional Director was not acting reasonably when he used the ILCA-derived criteria to assess the appellant's "Land Consolidation and Acquisition Plan." *Absentee Shawnee Tribe, Anadarko Area Director* (1990) 18 IBIA 156, 163.

[2] 25 C.F.R. 151.2 (Definitions) includes, in part: (h) *Tribal consolidation area* means a specific area of land with respect to which the tribe has prepared, and the Secretary has approved, a plan for the acquisition of land in trust status for the tribe. Further, 151.3(a)(1) (Land acquisition policy) states: (1) When the property is located within the exterior boundaries of the tribe's reservation or adjacent thereto, or within a tribal consolidation area; or

Rancho ("Tribal Consolidation Area").[3] As described more fully below, this area was part of the Tribe's ancestral territory and comprised most of its historic territory. The Tribal Consolidation Area was once part of the lands of Mission Santa Ines and was part of the subsequent Rancho Canada de los Pinos recognized by the U.S. government as well as being close to an individual land grant made to a Santa Ynez Chumash Indian by Mexican Gov. Micheltorena. All these lands were considered to have been the property of the Santa Ynez Mission Indians by the Spanish and Mexican governments and the Catholic Church. Even after California statehood, the Catholic Church carried forward this theory of land tenure by the Santa Ynez Chumash.

The Santa Ynez Band of Chumash Mission Indians has clear connections to the Tribal Consolidation Area based on law and cultural use. The tribal government has the opportunity to return the lost land - which it has had to purchase back - to its jurisdiction and stewardship once more through federal trust status. The intent of this Plan is to assist the Tribe with that goal.

History of the Santa Ynez Reservation

The Chumash people have been associated with the property included within this Plan and surrounding territory since time immemorial. In fact, a rich record exists of the Santa Ynez Chumash's historical connections to these lands. Archaeological evidence supports the area's use by the Chumash people before contact with the Spanish. This use continued during and after the Mission Period.

The Santa Ynez Chumash, ultimately, ended up with just a sliver of land under its jurisdiction. In 1906, the federal government placed 99 acres into federal trust around Zanja de Cota Creek. Today the Santa Ynez Indian Reservation comprises about 137 acres. This area includes unusable lands such as a streambed and an easement for a state highway that cuts through the reservation.

The acquisition of additional property within the Plan area represents an opportunity for the Chumash people to return a small portion of their historical territory to their stewardship. The goal is to create a tribal community on the land by building homes for tribal families. This also will

[3] See attached Exhibit B, map of the proposed consolidation and acquisition area.

help relieve overcrowded conditions on the present reservation, where much of the housing stock was built through HUD low-income grant programs.

The Chumash have long-standing cultural and spiritual ties to the property encompassed within the Plan and the surrounding territory. The legal record - involving actions by the U.S. government, Mexican government, and the Spanish through their Mission outposts - also demonstrates the land tenure history of Santa Ynez Chumash in this territory.

Except for a brief experience with tribes in the lower Colorado River basin along the present-day Arizona border, the Chumash were the first California tribal group that Europeans encountered in what is now California. Explorer Cabrillo sailed to the islands and coastal areas inhabited by the Chumash in 1542.

The Mission Era

The Spanish built five Catholic missions among the Chumash people. Mission Santa Ines was established in 1804 as a halfway point between the Santa Barbara and La Purisma (Lompoc) missions. Each mission was granted about seven square leagues of land surrounding it for the use and support of the local Indian communities. That would have given Mission Santa Ines more than 441 square miles of land.

In practice, the missionaries and soldiers were brutal men who enslaved the local Chumash people and nearly decimated them through disease, starvation and harsh treatment. Despite this, the sentiment of the Spanish and Mexican governments and the Catholic Church was that the lands of the missions essentially were what we know of today as reservations, for the use and upkeep of the Indians. The tribal members forced to live and work near the missions were considered to be neophytes or Christianized Indians.

The Church viewed the land to be held in trust for the Indians, who had a "natural" right of occupancy. The Church and Spain considered title to the land to be with the Indians as decreed from the "laws of nature and imminent occupation." The priests were just the administrators of the land on behalf of their Indian "wards." That is, the mission activity was not accompanied by a conveyance of land to the missions themselves. Under the

Spanish theory of colonization, the mission establishments weren't intended to be permanent.

The slave-like conditions at the mission led to the Chumash Revolt of 1824. It started when soldiers flogged an Indian from La Purisma mission who was at Santa Ines. The revolt spread to the Santa Barbara and La Purisma missions and led to the burning of the Santa Ines mission. Many Chumash feared the soldiers would kill them and fled to the San Joaquin Valley. The priests and military knew they couldn't keep the missions going without the Indian slave labor so soldiers rounded up the Chumash and brought them back to the mission.

A decade after the revolt, the Mexican government secularized the missions and intended to disperse the lands to the Indians and settlers. The goal never was fully accomplished. Many Chumash did flee the mission after the secularization efforts and ended up in the area around Zanja de Cota Creek in the Canada de la Cota. The area still was considered to be within the lands of the Catholic Church.

California statehood

Statehood for California in 1850 ushered in new attempts to deal with the Chumash land. The United States and California began addressing land claims and Mexican land grants that arose from the Treaty of Guadalupe Hidalgo.

The Bishop of Monterey petitioned the Board of Commissioners in charge of land claims in California on behalf of the Catholic Church and "Christianized Indians" associated with the 20 missions across California. Among his requests: That the government confirm at least one square league area to each mission, and confirm the grants to individual Indians and communities.

The basis of the petition was two-fold. First, the Church stated it held the land in trust for the Indians. Second, the Church had valid grants based upon the laws of the Spanish and Mexican governments and the Catholic Church. The Church's view was this: The land and any revenues from it belonged to the Indians. The role of the missionaries was to make sure that the land and revenues were cared and accounted for.

The Land Claims Commission denied the claims of the individual Santa Ynez Indians. But it did grant the Bishop of Monterey the right to the Canada de los Pinos, the area that is included within the Plan. The federal government in 1861 issued a patent for those lands to the Bishop. The Chumash villages around Mission Santa Ines lands remained within the land grant.

Mission Indian Relief Act

In 1891, Congress passed the Mission Indian Relief Act designed to help those Indians who had been associated with and enslaved by the missions. Many of these communities were destitute because their land had been taken away from them. In fact, much of the land these Indians had lived and worked on was lost through the land claims settlement process and the government later gave it to settlers.

Based on the Act, the federal government created the Smiley Commission which found that the Santa Ynez Indians were primarily living in a village around the Zanja de Cota Creek area on lands they had moved to around 1835 after the secularization of the missions. The commission determined that abundant evidence existed to validate the Chumash's long period of occupancy of the mission land, but the commission could not support creating a federal reservation through the legal theory of adverse possession because the Bishop's earlier petition stated that the Church had long considered the mission lands to be "owned" by the Chumash. The Chumash could not be considered to have been in adverse possession of the land - even though the previous Land Claims Commission denied their land claims.

Church lawsuit

The Smiley Commission developed a different approach. The federal government began negotiating with the Catholic Church to obtain federal trust lands for the Santa Ynez Chumash. Part of this scheme involved the Bishop of Monterey filing a lawsuit against individual Santa Ynez tribal members in a quiet title action. With U.S. government support through the approval of the local Indian agent, the Bishop commenced a quiet title claim. The action concerned about 11,500 acres of the Rancho Canada de los Pinos, or the College Rancho.

The action was necessary because, at least according to the position held by the Bishop in his petition to the Land Claims Commission, the Church actually held the lands around the mission in trust for the Chumash. The negotiations and quiet title action resulted in an agreement in which the Bishop would convey some land to the federal government for a reservation for the Santa Ynez Band of Chumash Mission Indians.

At various times, parcels of land ranging from 5 acres to 200 acres were proposed as the property to be deeded to the United States for the Santa Ynez Chumash. Each of these proposals represented areas that were significantly less than the original mission lands (held for the local Chumash), the Rancho Canada de los Pinos (the mission lands as reconfigured by the United States), and even the combined total of the Santa Ynez individual land grants.

Ultimately, what was transferred to the United States to be held in trust for the tribe was just 99 acres, a tiny fraction of the 11,500 acres of the Rancho Canada de los Pinos that had been that had been given up without Chumash consent.

Previous Land Consolidation/Acquisition Efforts of the Tribe

As noted, the Tribe was originally conveyed a mere 99 acres for use as a Reservation. In the 1970s, the Tribe acquired an additional 27 acres which was used for HUD housing. Since that time, the Tribe has purchased additional lands for inclusion in the Reservation. In 2003, approximately 12 acres were added to the Reservation when the Tribe's fee-to-trust acquisition was granted. The Tribe has a further fee-to-trust acquisition for 6.9 acres of land contiguous to the Reservation which was approved by the Department of Interior currently pending before the IBIA. The Tribe has additionally submitted an application for 6.6 acres of land contiguous to the Reservation.

In 2010, the Tribe was able to purchase the 1390 acre Camp 4 property from Fess Parker. The Camp Four property was once part of the lands of Mission Santa Ines and part of the area included within the Quiet Title Action. Thus, the Tribe has consistently purchased land within their historic territory and within the Tribal Consolidation Area.

Provisions of the Land Consolidation and Acquisition Plan

1. *Goals.* Consistent with its prior efforts, the Tribe is pursuing two overall land-related goals. First, to the extent feasible (both financially and otherwise), the Tribe wishes to provide a sufficient land base for the Tribe to house its members, economic development and tribal government activities. Second, the Tribe wishes to promote the highest and best use of any existing and future trust land base by assuring that Tribal goals such as cultural preservation are met while at the same time still providing land for housing, economic development and other governmental functions.

2. *Need to Set Priorities.* Due to the high cost of land acquisition in the Consolidation and Acquisition area, the Tribe must prioritize its land acquisitions.
   a. *Priorities.* With the financial and other constraints in mind, as well as the Tribe's goals and prior acquisitions, the Tribe's priority schedule for acquisition of land within the Tribal Consolidation Area will be:

      CATEGORY 1 - Highest Priority: Acquisition of parcels which can be used for tribal housing, economic development and tribal governmental facilities.

      CATEGORY 2 – High Priority: Acquisition of parcels contiguous to existing parcels of tribal trust land that have the potential of being used for projects of importance designated by the Tribe.

      CATEGORY 3 – Medium Priority: Acquisition of parcels not contiguous to tribal trust lands, but having development potential.

      CATEGORY 4 – Low Priority: Acquisition of parcels not contiguous to tribal trust lands for the purpose of increasing the tribal trust land base or of public domain allotments for purposes of increasing the tribal trust land base, exchange or mitigation.

3. *Procedure.* The Business Committee will review each potential land acquisition and determine into which category it falls. Depending on the categorization, and subject to the availability of funds, the Tribe will then determine whether to acquire the parcel or not.

EXHIBIT "C"

The Signed Acknowledgment of Tribal Chairman Vince Armenta that all 1,427 acres of the Camp 4 land is encumbered by, and subject to, California Williamson Act Land Conservation Contract Limits

2014-0032894

Recorded Official Records County of Santa Barbara Joseph E. Holland County Clerk Recorder | REC FEE 18.00 | CONFORMED COPY 2.00 | NL | 02:43PM 21-Jul-2014 | Page 1 of 2

Recording requested by and
When recorded return to:

Santa Ynez Band of Chumash Indians
Attention: Tribal Chairman
P.O. Box 517
Santa Ynez, CA 93460

Recd
CC

NOTIFICATION OF ASSUMPTION OF WILLIAMSON ACT CONTRACT PURSUANT TO GOVERNMENT CODE ("Gov. Code") SECTION 51243(b)

WHEREAS, Gov. Code Section 51243(b) provides that an Agricultural Preserve (Williamson) Act contract shall be binding upon, and inure to the benefit of, all successors in interest of the owner;

WHEREAS, an Agricultural Preserve (Williamson) Act Contract controls the permitted uses on **Assessor's Parcel No.s 141-140-010, 141-121-051, 141-230-023 and 141-240-002** and the Contract designates the above-described real property as **Agricultural Preserve Number 71-AP-037 as recorded on February 3, 1972 as Instru. No. 3889, Book 2385, Page 431;**

WHEREAS, the name of the previous owner(s) of the property are **John Vickers Crawford and Thomas H. Crawford,** where heretofore entered into an Agricultural Preserve Contract with the County of Santa Barbara, effective January 1, 1972, pursuant to California Gov. Code Sections 51200, et seq., who thereafter sold the above mentioned real property to **FESS PARKER RANCH, LLC,** as successor in interest of the owner pursuant to Gov. Code Section 51243(b);

WHEREAS, FESS PARKER RANCH, LLC, sold the above mentioned real property to the **SANTA YNEZ BAND OF MISSION INDIANS ("Chumash"),** as successors in interest of the owner pursuant to Gov. Code Section 51243(b), on March 26, 2010, which was recorded on April 1, 2010 as Instru. No. 2010-0016911;

NOW, THEREFORE, by **RESOLUTION NO. 931,** the Business Committee of the Santa Ynez Band of (Chumash) Mission Indians has filed a Notice of Non-Renewal for all such Agricultural Preserve (Williamson) Act Contracts binding such real property pursuant to Gov. Code Section 51243(b), which notice has been approved by the Board of Supervisors, and the Tribe agrees to comply with the terms of such Contracts during the nine (9) year non-renewal period until the expiration of the Contract (hereinafter the "Assumption") (or upon cancellation or other termination, whichever occurs first).

Nothing in this Assumption shall waive or limit in whole or in part the sovereign immunity of the Santa Ynez Band of Chumash Indians ("Chumash") or its members, officials, employees or agents. Further, nothing in this Assumption shall change the legal implications of ownership of the property or in any way impose additional obligations of responsibilities on the Chumash. Federal law and tribal law shall govern this assumption to the fullest extent possible, including, without limitation, after any such land described in such Assumption is taken by the United States in trust for the Chumash.

SANTA YNEZ BAND OF MISSION INDIANS

Dated: 7-21-14

By: _____
Vincent P. Armenta, Tribal Chairman

SEE ATTACHED FORM FOR
NOTARY CERTIFICATE

EXHIBIT "D"

Copies of Excerpts from the Tribal Council Meeting in April of 2000 in which tribal Chairman Armenta explained the purpose of bring the lands the tribe intended to purchase into federal Indian trust status was to evade all regulations and jurisdiction of the County of Santa Barbara

Chairman Armenta – If it is not 100% useable, the reason for acquiring number 5 is to make it a part of number 3 and 4 if we decide to get those. This way everything is connected. That is the reason for it. Everything should be, as far as the bureau is concerned, easier on us if everything is connected.

Elise - Is that a gas station, too? Is that what I see? John Volk on there?

Chairman Armenta– John Volk is on there.

Elise – Just so we are aware because then we would be within regulations with accounting because of the gas station. We would have to abide by regulations.

Chairman Armenta- No, there is a fine line. I don't know why we wouldn't want to do anything that wasn't in the best interest of the public.

Reggie – You mentioned about expediting the land into trust. Should we go with all of the selected properties? One thing you did mention in regards to the bureau, and I know you and I have been part of the discussion and felt that the general council should know, that the bureau currently doesn't have the manpower to help expedite. That is a real key to doing this by turning back money that we get from the bureau right now for tribal administration, allowing that signed back as a grant and actually what they refer to as a personnel action. You can actually designate that money to be someone who handles your property issues. We can help expedite and pay for that person's position. That is what they are suppose to do, is take care of our land. By doing that it will help expedite because we paid for the personnel specifically, the money the bureau has targeted for us for tribal administration. We now assign somebody to the bureau to take care of the property and take care of all the aspect and put it into trust and we will be able to do it within one to two years. I just wanted to add to your statement to that which would help us in expediting this entire process very quickly.

Chairman Armenta– Right, exactly. So really quick because this could get very long. Rudy, now that you understand -- well, you just told me that you didn't understand what I was talking about owning title free and clear.

Rudy has made a motion to buy the property that is adjoining across the street and get it into trust, that would be number 6. Do we have a second to Rudy's motion? Nobody has seconded the motion. Junior has made a motion to go forward for all the property that we have outlined on the map. Do we have a second on that? Bea Marcos has the second. The map is to show what is available. Can we have a little bit of order, please?

The intent is not to purchase every piece that was put there for information. If the pieces of property are not feasible or are too expensive, I don't believe anybody on this committee will even agree to make an offer. The idea of the map is to show what is available and try to acquire the pieces that are available, but if it is not a reasonable offer then we won't do it. The properties that I'm mainly talking about are number 3, 4, 5, and 6. If we run into a problem, which we may, perhaps number 2, which would allow us to jump back and forth across the highway, which we could do. The other one is the upper portion at Gainey's. There is no number on it; it is just

the one at the bottom of the page that is white-lined in. We are running just a little over 1,000 acres. It stops right near the end of the pavement on the reservation -- is where the last lot there stops. Mr. Gainey has made it very clear that if this goes public, he won't do anything with it. That is why I'm saying we have to be very quiet about it. He will not go through with it. I do have a meeting set up with Mr. Gainey; the business committee is aware that we have a meeting. If it gets out, I'll tell you what we won't be able to buy anything. If we do, the prices will be so inflated that we will have to sell our casino to buy property. Rudy, I want to buy the property that is feasible for the reservation. If Guy Walker's is not feasible, we will not buy it. If Mooney's is not feasible and the price is inflated, we will not buy it. We can jump back and across the highway and buy individual lots that are better priced for the reservation that is what we will buy. We will leave anything out that is going to take advantage of the tribe.

Rudy is talking but not able to understand.

Chairman Armenta - Rudy, I said three times you know when we bought the property. I don't know why you are asking me how long it has been sitting there. It has been sitting there for almost four years. If we don't buy additional property and get the application submitted to the bureau to get the property into trust, then any future property we purchase will have county regulations on it. That is what we are trying to avoid. We do not want the county telling us what we can do specifically with our property. That is the intent here.

The intent isn't to buy property and let it sit; the intent isn't to take all the money from the casino. The intent isn't to buy every piece of property that is available throughout California. It is very specific-- buy property that is useful to our reservation and submit applications to the bureau to get the land into trust so that we are not strictly regulated; that is the intent. We will never get it into trust without county jurisdiction unless we do it now, unless we do it by mid-summer. That is why every other piece of property is important. The county is going to tell us what we can do with it until we get it into trust. If we don't get application into trust shortly, then the county will be able to tell us for the next 200 years what we can do with it and I don't think the tribe wants that. That is why I said we need to sit down with Gainey, our accountant, and everybody after we review this report and get it back and after we do an expansion. My thought is, and I'm sure it is everybody's thought, that if we were to put 2000 machines in there, which everybody I've talked to says the market will allow, our per capita would double.

Talking, but not able to understand.

Chairman Armenta - That was what the motion was for; Bea Marcos seconded it. Okay, let's take a vote from in the house. All in favor, raise your hand. I'm sorry, let's do a roll call.

Unidentified woman – Can't we just send it all out to ballot to everybody because some of the people are not here though.

Chairman Armenta – No, let's save some money in postage. We are going to send it to ballot.

Unidentified woman - I know, but since some of the people left that have signed in.

EXHIBIT "E"

Copies of Excerpts from the Tribal Council Meetings between 2000 and 2006 in which several different projects were discussed for the Camp 4 property including a golf course (rendition included depicting a 2nd gaming casino) a proposal to build 500 single family homes to be sold at market rates to the public by using long term ground leases of trust land. (note no mention is made in any of these discussions about any need for additional tribal housing)

SANTA YNEZ BAND OF MISSION INDIANS
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May 31, 2000

SUBJECT: GENERAL COUNCIL MEETING, SUNDAY, June 11, 2000 @ 10:00 a.m.

Dear General Council Members:

The next General Council meeting will be held on June 11 at 10:00 a.m. Your attendance is appreciated, as we must address a few very important issues.

Land Acquisition:

We received confirmation for licenses to operate an additional 1240 video machines, which must be in operation within 12 months. In two years the Tribe will begin paying an assessment (percent to be determined) to the state, as stated in our Compact. The Tribe must act now to maximize our profits and to build a future for our tribe through diversification, yet maintain our per capita allotment.

A marketing firm was hired to prepare a market study on the impact the operation of increased machines could have, and how we as a tribe could benefit from the growth. The results of the report will determine how large a casino can be built, what size of a parking facility can be built and how large of a hotel complex can be built, if our Tribe decides to do so.

We sent 5 proposals to various architects to prepare a preliminary design (at no cost to the tribe), of a new casino, parking facility, and a hotel complex. When all designs are submitted at the end of June, you will ultimately make the decision on what architect firm the Tribe will use *if they decide to proceed with the expansion.*

Recently you have been asked to vote for land purchases off Hwy 246 and the Gainey property. It is imperative we increase our land base and take advantage of placing all newly acquired property into trust this year, before the laws change and make the trust process more difficult by requiring that the Tribe obtain approval from the County.

The casino and parking lot will remain on current Reservation land, as we cannot interrupt our gaming operation. If the land acquisition ballots succeed, the property off Hwy 246 (3400 Numancia) could be used to house our tribal hall, cultural center/theatre, administrative offices, day care center, tutoring facility, etc. and the Gainey property could be used for a hotel, spa, golf course, etc. If the Gainey property ballot passes, we have an opportunity to acquire the Sanja Cota Road and the Tribe can choose whether or not to reconstruct the road without obtaining permission from the County and/or Gainey.

5/21/2000 Executive Summary

Casino Management

The new casino general manager was introduced. Jonathan Gregory spoke and told the general council a little about himself.

Ballot Results

Gaming ordinance passed with alternative 1 (re-elect five new members for staggered terms).
Youth project failed.
Road construction passed.
Purchase of land failed.

Land into Trust

Bureau is starting a program that would allow us to reallocate grant monies back to the bureau. Santa Ynez needs a tribal resolution to give the grant money back to the bureau from tribal government operations. Other tribes, Viejas, Morongo, gaming tribes have done it. Giving the money back to the bureau will let the bureau staff their offices and expedite the land into the trust process. It would be about $70,000 a year; the project will last three years, 2000, 2001, and 2002. The tribe currently receives $107,000. It would return $70,000 to the government so they can start the land-into-trust offices and its expenses.

If Santa Ynez decides to buy more land, the process would be expedited. The money does not go to Washington, DC. It stays here in California. Some tribes are waiting 5 to 10 years to get their land into trust. The land into trust is beneficial to the tribe. It does not benefit any one tribal member. Some tribes are giving back every thing; some nothing. It depends on the circumstances of that tribe. Virgil Townsend of the BIA originally asked for $100,000 from Santa Ynez. He then lowered the amount to $70,000. The money is pooled from all of the tribes for staff, office and expenses.

Ballot Counting Concerns

Purchase Lands

Mr. Ganey is concerned about selling the land to Santa Ynez. He doesn't want the public to know about it. This is the largest piece next to the reservation. The tribe will have to consider jumping across the street if it can't purchase it. All of the tribal attorneys agree that contiguous land is best for the tribe to purchase and put into trust. Through the acquisition of other lands, it would all be contiguous.

Discussion was held about building a resort versus a hotel. The point was made that the land *must* be purchased first before anything can be done so it can be placed into trust. The new machines from the pool selection – 1,240 – bringing the total to 2,000 – those machines must be operating within a year. The parking and hotel are all an issue. It will help if the tribe will purchase more land. The tribe is trying to get land that is all centrally located to the existing land.

It was suggested to use the sprung for some of the new machines, to cut back on bingo.

It was emphasized that if the tribe did not purchase the land and start the process to get it into trust, then the opportunity would soon be lost.

Interest rates were raised as a concern. Who will lend the tribe money? And at what rate? The tribe will shop for the best rate and/or use tax-free bonds. The regulations will be changing soon on the land-into-trust process and the tribe wants to beat the deadline so the county cannot assess taxes on it. The end of August is the deadline.

Tax–free bonds were explained as an investment that is tax-free to the person putting up the money and therefore the interest rate is lower. It's cost effective. Tax-free bonds cannot be used for the casino only infrastructure/golf course. The money for the casino will come from banks or other financial institutions.

The land across the street is in escrow; the period ends tomorrow. Without approval from the general council, the tribe will not buy it and the realtor must be told. Any land the tribe is looking to purchase is for the benefit of the tribe, not any individual member.

A discussion was held to motion sending the land purchase out again to ballot. The delays were discussed in doing that – possibly as long as 10 weeks. If the tribe is interested, though, we'll continue with looking into the purchases. There are reports that will have to be completed if the tribe goes ahead with the purchase, the Alta and the EA. They will have to be paid for at a cost of around $16,000. The ballot needs to be a little more specific as to the purpose of buying the land, how much will the lending cost be, where a loan could come from, percentage rates, etc.

Remember that revenues will increase with the new machines and that will help. The business committee has been elected to represent the tribe to the best of its

ability. A ballot will go out tomorrow with a letter of explanation. It will cost for the Alta and EA reports. A motion was made to continue trying to purchase the property already in escrow across the highway and do the Alta and EA reports. It was seconded with no one opposed the motion. A motion was then made to purchase a portion of the Ganey property, around 300 acres. It was seconded without opposition.

Marketing Study
Urban Marketing Studies is completing a market study now. It will be a tool for the Santa Ynez Tribe to evaluate and make a decision on Chumash Casino. Urban Marketing is one of the largest and most reputable companies. The deadline is running short. We have to take into effect the tourism in the surrounding areas.

The Chairman emphasized that a lot would come out in the market study about the golf course and hotel; that something will not be built that cannot bring the tribe increased revenues. The brief market study report supported getting the maximum machines (2000). It will take longer for the full report.

The general manager, Jonathan Gregory, will determine where the machines go and what type. He has been very involved in everything at other casinos. He knows the online systems and the machine vendors. He's completed studies. The Urban Systems report will tell us what type of machines are best for Chumash Casino. Discussion was held about changes in per capita payments and income statements, especially during the three-month period when everything was changed over.

Nominations for Gaming Agency
The floor was opened to nominations.
Gilbert Cash, Vince Gomez, Charity (?) Romero, Rudy Romero, Julio Carrillo, Millie Meaux, George Armenta, Raul, Reggie, Lydia, Manuel Kahn, Virginia Ochoa. The number of votes received will determine the staggered terms. If two family members are nominated, then the family member with the least number of votes received would step out. Family members cannot be on the same committee but they can both run; they can be nominated, but only the one with the most votes can serve on the board.

Staffing the Tribal Hall
It seems to take a long time to do things because the tribal hall is understaffed. Since the existing tribal hall land is vital for any casino expansion, the tribe can move the other offices somewhere feasible and re-staff if necessary. Some

committees are being run out of the trunks of cars. A discussion ensued about buying more trailers or waiting for the expansion to start.
A motion was made to set up an office trailer in the back on the rocks behind the existing education trailer. The goal is not to intrude on the main operation of the casino or parking area. These tribal offices would include enrollment, education, elders, business committee and tribal hall staff. One could also be used for general council meetings. Not just for business committee for all of the tribal operations. The motion was made and a second received. Motion carried with one in opposition.

Architectural firms
The Santa Ynez tribe sent out requests for proposals (RFPs) from five architectural firms throughout California and the United States. They will now complete a design competition in order to qualify to get Santa Ynez' business. They'll submit quotes for the design. The deadline is the 15th of June. It will include a casino, parking structure and hotel. These RFPs are free to the tribe and will decide which one it wants to use. The company that submitted a plan before is one of the firms bidding.

It was noted that DesignARC, Mike Holliday, who once did a design for the tribe that cost money, admittedly is not a casino designer. The bids will include everything – a preliminary design of the exterior, casino, hotel, and parking. The interior will come later.

The project would be a year and half from design to finish; could be two. The tribe needs to address adequate parking for the 2000 machines. The community will not support a hi-rise hotel. The tribe needs to buy the land to place it; not enough reservation land now.

Accounting issues/Credit card update
Kate Walker in charge of tribal finance is out ill. The records are now in accounting. Five people from there spent 10 days trying to get the report done. The report still doesn't reflect if any money was paid back to the tribe for personal use. The report is 500 pages long and goes back to 1994. Progress is being made on the report.

Road Construction
A grant is available that will pay for the majority of the road construction – $129,000. That will pay for the majority and then the rest will come out of

economic development. The budget is approved for $170,000 and as long as that figure is not exceeded, it's okay.

Water Quality Grant/Monitoring Grant

A grant is available to monitor water on the Santa Ynez Reservation. The grant will fund the sampling of the creek water and determine its quality. The water quality program would ensure that people are not dumping raw materials into the creek. If people are dumping above the reservation, then the EPA will address it with them. It will permit the tribe to know what is being dumped in the water off the reservation. This is a grant. There is no money out of Santa Ynez' pocket. The grant will permit the program to be set-up. The EPA will go after anyone polluting the creek upstream. Motion passed.

Restraining Order on Torres

Attorney Larry Steadham advises the tribe to pass a resolution barring him from the Santa Ynez Reservation. In past, the tribe has tried to work with him about liens and invoices, that is now in Larry's hands. Motion was passed to ban Torres from reservation.

Two General Council Meetings a month

It was discussed to hold two general council meetings a month to permit more time for people to ask questions.

Tutorial Center Update by Geraldine Lewis: The Youth Center is at the new location on Via Juana. Some of the activities in progress are developing a garden area and a summer program including field trips. The Center is equipped with a computer room for younger and older students. The director is working on setting up a fall program to not only help children with homework, but also to work on problem areas.

Clinic Update by Laura Ray: The director is working on re-establishing the health board. Submitted a grant for $300K, spread over a three year period, to establish a health board. Physicians, a dentist, and other medical affiliated personnel will sit on the Health Board. Seven to nine persons will be the governing body of the clinic. The time line for the first year will be education, hiring, recruiting, the 2nd year will consist of training and creating by-laws. The creation of a new health board will take at least 6 months.

Another grant for a podiatrist (to help diabetic patients) is in process. Three or four construction grants are in process. Expansion of the clinic is necessary. The clinic director is applying for a grant $300K (over three years) for circle of care. This is for the children of the tribe through the age of 22. The object of the grant is to foster the care of youth to prepare them, mentally and physically, to become our next leaders.

Mailings to the Tribal members asking for suggestions for improving the Clinic will be sent out shortly.

Expansion Update:
Completed the agreement with the Sewer District last Monday for more capacity. This additional capacity will allow us to continue our Casino expansion. If the Tribe decides to build its own sewer treatment plant, we will have the opportunity to sell back to the District the sewage capacity not being used.

We installed underground sewage tanks at our cost—a mitigation measure for the sewer district. The district maintains the tanks; we own the tanks and the easement. Now the district can permit additional growth in the valley. The cost for installation of these tanks is approximately $60-70K.

The 4 underground sewer tanks, for a total of 24,000 gpd capacity, are capable of handling approximately 2 hours of overflow sewage collection.

Working with the Water District is more difficult. We drilled wells on the Reservation and the water from those wells will be used for fire protection. The tanks are located behind the metal building. The water tanks will serve the new building and the parking structure. Per the Water District regulations, because we drilled our own wells, we are required to install back flow devices on all the water meters on the lower reservation, tribal hall, clinic, and casino. The cost of the back flow devices will be covered through the Casino. Water hookup in the new facility will not happen until the back flow devices are installed.

The cost for the water wells were approximately $20-25K and installation and cost of the tanks are approximately $32-34K per tank.

County Update

Bottom line, the county feels we should pay them $7 million now and a little over a $1 million per year thereafter. In summary, $4.5 million was for affordable housing. We are doing a study that shows that the majority of the people who are working at the Casino already live in the valley. $290.7K is for outdoor activities—the tribe continues to contribute to school programs, YMCA, etc. The County is requesting new administrative facilities fees of $209.4K. Fire protection of $302K—They would like the Tribe to purchase a fire truck. $341K for schools—the Tribe already donates to schools. $540K for air quality control. They want to purchase clean air emission busses. $150K for regional traffic. This is a Cal Trans jurisdiction and not the County. $800K for highway improvements. The Tribe will be funding the improvements. Electrical power lines $320K. The tribe already has an agreement with PG&E. Total of one time costs that the County is asking for is $7,226,202. At a recent meeting with the County Board of Supervisors, our Tribal Chairman asked, "Show us where we will impact the community with our expansion and we will address those issues only". The Business Committee will be meeting with Mike Brown, County Administrator, on Thursday to discuss the county analysis.

Recurring costs the county feels the Tribe should pay is $486,335 per year. The costs consist of $7K for park maintenance for the only park in Santa Ynez. The Tribe is planning to build a cultural center/museum, which will be open to the public. $315K for fire dept. and paramedics. This is a reoccurring cost that we the Tribe are obligated to pay. Sheriff protection $30,866—to handle the calls from the Casino to the Sheriff department. The Casino has an impact on the Sheriff and Fire Departments. Regional traffic maintenance of $100K. This is a Cal Trans jurisdiction. We already paid $170K to repair a county road (Sanja Cota). Once the development starts on the 6.9 acres across the street, the Numancia Road will be the obligation of the Tribe—it serves the County. The County asked that we offset the cost for SY Valley Transit of $33K per year.

A portion of the revenue sharing fees which the Tribe will pay to the State will be funded back to the County.

Gail Marshall is calling a town meeting, on the 30th of May at 7:00 pm at the Vets Building in Solvang. She is claiming that the Tribe's gaming expansion will include development on the Reservation as well as across the street. The BIA granted the County a one-month extension (June 17th) to respond to the EA for the 6.9 acres across the street. The County input will not have an affect on our application for fee to trust. In order to keep the design of the new Casino building to a minimum height, we will need to move the tribal hall and the clinic across the street.

The Business Committee did cancel a couple of meetings with the County—they wanted us to sign a paper stating we would meet with them every 2 weeks and then asked us to sign a document stating everything will be confidential—we did not sign anything. The next day after a meeting with the Business Committee, the Supervisor went to Sacramento to complain about what SYIR is doing.

Responses to Casino Expansion newspaper articles are in progress.

When we start Phase II, the County will definitely ask for more money. The County hired an Indian attorney from CILS for consulting.

The proposed development project is designed to deliver the following: generate additional revenue, provide tribal housing for every enrolled Tribal Member, and enhance the existing Casino Resort. This would diversify our income and position us for the future and the uncertainty of the monopoly on Indian Gaming and the fact that in the year 2020, the compact expires.

ATTACHED

A rendering of the proposed project was shown. The price of the property (745 acres)is $12M and the cost of the proposed development of the property is between $200M and $250M. Development includes a 300 room resort hotel / spa, two eighteen hole golf courses, support facilities, infrastructure for roads, utilities, water, gas, waste water, and storm drains. Approximately 150 tribal homes based on an average of 2800 square feet each in addition to the homes for the public. The full potential of the development could accommodate up to 500 homes.

This project was introduced by Fess Parker who has established a reputation as a very insightful and successful property developer. He wishes to develop a partnership with the Tribe. It would be a 49-51 percent joint venture and the Tribe to hold 51 percent and Fess Parker to hold 49 percent. The property is located on the corner of highway 154 and Armour Ranch Road. The project will be financed 100% through third party debt, i.e., the bond market with portions of the debt to be secured by the Tribe and other portions by Parker and the partnership. He has offered the property to us for $12M with a 90 day escrow. Tribal housing would be a separate development from the joint venture partnership, of which the Tribe would control. We would transfer the land into trust. Mr. Parker and his family would be the managing partner but we maintain certain approval rights under the 49-51 percent partnership. The available market data indicates there is adequate visitation to the area to support such a project.

Strategy of the best method to purchase the property is yet to be determined. The Tribe could pay cash, which would deplete all our cash resources and decrease the liquidity of the Tribe, or we could leverage the finances the Tribe currently has by using 90% of it at a 2.1% interest rate, or use traditional bank financing using the property itself as collateral and secure a loan on it. Just before it goes into trust we pay it off and transfer the deed.

Investors who bought the Tribes bonds say the Tribe can leverage the facility for 5 times the amount of its value which means the Tribe could go to the open market and borrow $450M at a much lower rate than is being paid on the existing loan. The anticipated interest would be 6 or 7 percent.

It is estimated the hotel itself would generate $25M to $30M per year. The public housing would be released through the joint venture and would be sold at the fair market rate for the Santa Ynez Valley which is currently $750K to $900K and would be on leased property. The long term venture, has the potential for generating significant amounts of income outside of the Casino. It provides diversification. It reduces our risk of relying only on the Casino. It puts us in a better position for our financial future. It allows us to use our ability to borrow money and increase our earnings.

there would be all kinds of penalties, taxes and interest penalties, if the IRS decides there was something wrong. Glenn continued by saying that is probably why the Business Committee has been so careful about this and insists a Private Letter Ruling supports this particular plan. Glenn thinks there is some reason for concern.

Compact Update. Glenn stated the Governor has signed new compacts with five tribes. Under this compact, the State of California is going to float a one billion dollar bond. The five tribes who signed under this new compact have agreed to pay off that billion dollar bond issue, $100M per year for 18 years. As a result of that, the tribes can acquire an unlimited number of machines, paying the State a sliding scale per machine per year. The term of the new compacts was extended for ten additional years.

Under the new compacts union organizing activities are made easier. The other major non-economic issue is the environmental provisions. Under the existing compacts the Tribe has an obligation, to have some public input (study, public hearing, comments), but at the end of the day, the decision on whether to proceed is the Tribe's decision. In the new compact, before the tribes proceed, they must have written binding contracts with the county. An arbitrator will make the decision if the county and tribes cannot reach an agreement.

What the five tribes have done does not affect our compact in any way. The Governor cannot change our compact. Class II machines are not covered under any compact.

Proposition 68: sponsored by race tracks and card rooms. Basically, certain race tracks and card rooms want slot machines, and they will share revenue with the state.

Proposition 70: sponsored by Agua Caliente. It extends the term of the compact for 99 years, lift all limits of gaming (casinos and slot machines). The tribes would revenue share with the State 8.8% (the same corporate tax rate). Special distribution fund will probably go away, but the non-gaming tribes will get their money.

Revised Reservation Sales Tax Ordinance No. 12. The Tribe adopted this ordinance a couple of years ago which created the Tribal Sales Tax on food and beverage. We now need to add the hotel bed tax, which is the same rate charged in the County. Under the existing ordinance, there are two funds for distribution, a percentage for the county and the City of Buellton and the other percentage of the fund for tribal government. Under the new ordinance, the two funds will be combined into a single fund. The General Council will approve funds for the county and/or local government. The other part of the funds could be used for normal Tribal purposes (for example, tribal government administrative expenses, furniture, fixtures, equipment and maintenance of tribal buildings and facilities, infrastructure, capital improvements, etc.) which are normally approved by the Business Committee. A request was made to amend the Ordinance to read that the General Council will approve all expenditures.

MOTION: Elise Tripp made a motion to approve the revised Ordinance 12 as amended, to have General Council approve all expenditures. The motion was seconded by Christine Viar, motion carried.

* RENDERING OF PROJECT

Minutes: Special General Council Meeting
Tuesday, August 30, 2005

The Chairman opened the meeting and welcomed those in attendance. He stated reason for calling this special meeting is because we have a very short period of time remaining for comment regarding the 5.8 acre Fee-To-Trust application. There may be some benefits for the Tribe to look at in regards to the 5.8 acres. The Chairman identified the location of the parcels comprising the 5.8 acres and added that they are located across the highway and are opposite from the 6.9 acres.

There are pros and cons to removing the 5.8 acres from the Fee-To-Trust application. The decision must be made by the General Council as to whether or not we should remove certain parcels from the existing application which would leave Mooney, Escobar and the property right next to Escobar.

Some of the pros are that it would remain a liquid asset for the Tribe. It provides assistance for the Tribe in negotiations with county. In a meeting with the county two weeks ago, the Chairman made it very clear to the county that the Tribe is still looking for land to put into trust to build houses. Similar to something we were going to do with Parker but we will do it with or without Parker. We are still looking at that. If the Tribe chooses to pull these parcels off the application, the General Council can direct the Business Committee to resubmit to the Bureau on another application.

As we are looking at the development of the 6.9 acres, we are currently doing a market study that will tell us what businesses would be successful and how much interest there would be in the businesses, not only on the retail and offices on the 6.9 but also on the 5.8 acres. We are taking a look at everything as one big picture rather than looking at each parcel independently.

One reason we are looking at removing some parcels from the FTT application is that once the parcels are accepted into trust it is that it would take an act of Congress to take them off. That would be difficult to do. It can also help the tribe in negotiations with the county. They are will aware we are looking for additional property. Pulling these parcels off should not result in any concerns or arguments with the county regarding the parcels remaining on the application. Not only has the county commented on the 5.8 acres but two days ago we found out the state has now submitted a 9 or 10 page document to the Bureau of Indian Affairs on the 5.8 acres as well. It gives us leverage on both sides. It shows that we are working with the county and to help with any future trust acquisitions. Again, it could be placed into trust at a later date. All the studies are complete for those parcels. It is just a matter of pulling those parcels out of the existing application. If the Tribe decides at a later date to put it into trust, in say 3 to 5 months or in a year, all the work is completed and it simply putting into another application.

There are some negative aspects in leaving it on the county tax roll. We have to pay taxes on it yearly and not only as bare land but if we decide to develop it it would be subject to county regulations, county zoning which is currently commercial highway with a mixed use overlay. We would pay taxes on the development as well.

Our current property taxes on the parcels is $5,840.63 annually. That is only on the parcels across the street, the yellow house lot, the Verizon lots, and the corner lot. It would remain under county jurisdiction under their policies. It is commercial highway zoning as it stands right now. Our application was submitted as a categorical exemption meaning we are not going to change the use of the property. It is consistent with what the county has it zoned for. It has a mixed use overlay which means businesses may be built and apartments built on top of them.

In conclusion, the Chairman stated, we would remove those three parcels and move forward with the Fee-To-Trust with the remainder of the parcels currently on the application.

In response to a question from the floor, the Chairman stated the application is submitted and is currently in the comment period. The county has filed a comment. The Concerned Citizens have filed comments against and POLO (Property Owners of Los Olivos), POSY (Property Owners of Santa Ynez) filed comments against and now the governor's office.

In response to a question from the floor, the Chairman said that we have not yet received a copy of the letter written by the State of California but the Bureau contacted us and said they would send us a copy of the letter. The state is siding with the county and it is about the tax issue, $5,800 a year.

The question was asked about why no one else purchased the lots in question and developed them commercially. The Chairman responded that he did not know and would not know what commercial development might be valuable there until the marketing study data was available. Ken Kahn added that we, the Tribe, owns all three parcels and they were owned by three separate owners before. The question was asked again if the property was so valuable, why anyone hasn't purchased the land and developed it before now.

The question was asked if the county could stop the Tribe from developing the land. The Chairman said they could slow us down in the process. The only way they could stop us is if we go for something like a conditional use permit. They can stop that. It being zoned is basically a land use permit for that zone. It is different than if you wanted to just build apartments there.

The question was asked from the floor if the other parcels included in this application would be 'picked on' by the county, too. The Chairman responded that the county only addressed these parcels. The county's complaint has always been the loss of taxes. One of the biggest advantages here is that it gives us an opportunity to say we pulled this off the application. Number one, we want support on the remaining parcels on this side of the highway which are all landscaping except for the vacant lot on the southeast corner. Number two, it tells them they can work with us on the larger parcel of land. It also shows good faith on the part of the tribe and the Chairman will ask them to withdraw their opposition to the remaining or larger piece of the property.

The Chairman reiterated the purpose of this meeting was to get approval from the General Council for the Business Committee to be able to offer the county a proposal to remove the 2.7 acres from the FTT application. The Business Committee does not have the authority to do so without the approval of the General Council. Whether or not the county agrees to work with us on this is yet to be determined. If they do not, we can tell the state and federal government

agencies we attempted in good faith to work with the county on the land issues but they would not work with us.

Rudy Romero commented the tribe did not want any more flack and this is why the consideration is being made to not take these parcels into trust now. This might stop most of the flack. He added there was nothing wrong with developing the land even if it is not in trust. If we are going to diversify, we are going to diversify. We will abide by county rules. If we are sincere in what we are doing, diversify. What is wrong with developing the land under the county auspices? There is nothing wrong with that. We are going to have trouble taking that parcel into trust anyway. If years from now, once it's developed, why are going to take it into trust?

The Chairman said that was a decision the General Council needs to make. We talked about diversification. This could be a saleable asset to the tribe. Where does the value lie; in the asset or in trust? The study that is coming in will determine that.

Mr. Romero responded that if we take it into trust, we avoid paying taxes and that is a big issue. We can stop that by not taking it into trust. That will not stop us from developing that piece of land. The Chairman commented that taxes would increase with development on the land. Rudy Romero said we would never go wrong holding on to real estate especially in that area.

Maxine Littlejohn commented it would be an asset to develop the land and make money off of it and buy more land. The Chairman said just because we own it doesn't mean we have to develop it. It needs to make sense to develop it.

A comment was made from the floor about the overlay showing apartments. The question was asked if that would be tribal housing or housing for just anybody. The Chairman answered that if we are going to use any land for tribal housing, it is a good idea to have it in trust. This is such a small parcel. Mixed housing is going up all over the county. There is some in town and there is some in Santa Barbara.

Reggie Pagaling made the motion to withdraw the 5.8 acres from the current application. The Chairman said there 7 (seven) parcels facing Numancia Street. They total about 2.7 acres. The 5.8 also includes Mooney's, Escobar's, and Daniel's and they will stay on the application. The value of the property is about $600,000 per lot or about $4.5M. We paid about $680,000 for the Verizon lot and about $600,000 for each of the others. These are the lots north of Highway 246 and facing Numancia Street. The Chairman read the parcel numbers. There was additional discussion about the total acreage, 5.8 acres and the 2.7 acres, to be withdrawn from the application, the development of those parcels and the potential negotiation leverage with the county, and the benefits of withdrawing the parcels and the potential development options. The tribe could submit an application at a future date to have these parcels placed into trust.

The Chairman stated this action would have no impact on the 6.9 acre application. Removing these parcels from the current application for the 5.8 acres would open or extend the comment period for an additional 30 days.

There was a comment from the floor about where the tribe's funds are going and accounting of the money should be provided to the tribe. The Chairman said there was no secret account and they could discuss the accounts later.

There was additional discussion about withdrawing the seven parcels from the FTT application and the pros and cons of doing so. The Chairman said all the information would be sent out with the ballot.

The question was asked from the floor that when the bonds are paid, will there be an increase in per capita distributions. The Chairman said the General Council can do what they want. There are options to purchase property and to diversify. We will get into that.

Action Reggie Pagaling restated his motion; Reggie Pagaling made the motion to withdraw 2.7 acres from the 5.8 acres in the Fee-To-Trust application. Parcel numbers: 143-253-002 through 008. The motion was seconded by Norma (Levan or Comastra). The motion carried and will go out to ballot.

The meeting was adjourned.

televising of poker play. It is not a big money maker and it occupies some very expensive retail space right next to the high limit room. The other part is that we could add poker tables to add to the poker revenue and at the same time we have the ability to expand the high limit room. It is a critical area for us in terms of driving revenue for the facility. Our players come in and really light up those machines in there. We would like to increase the number of slots we have committed to that area. We think we can increase the revenue from that room by about $2M a year.

Mr. Brents then announced they would like to seek the approval of the General Council to acquire the Frederico's property in Buellton. It is a 15,000 square foot building plus a restaurant. It has 144 parking spaces which are critical to us. It is a 44 acre site and is on and off the 101 and has good access on McMurray Road. The estimated purchase price is $3.35 million and the renovation cost somewhere in the one to two million dollar range depending on the engineers' determination. We think it is a strong piece of property for the tribe and a strong holding in the long term and will add revenue right away to the Casino. Our goal is to maximize that.

There was then some discussion about the property. Some due diligence will need to be completed to be sure we are not in violation of any use restrictions for the property in Buellton. There is no gaming violation involved as long as the records are not taken off site. The revenue impact after the expenses of modifications including those at the Casino will be about $3 million per year. This would be very short recovery period and is one of the few areas we can convert non-gaming area to gaming area.

We need three to four hundred hotel rooms on permanent basis. A conservative estimate of impact on revenue would be between 20 and 40 million dollars a year in additional revenue to the Casino. Our request would be to evaluate some properties and get approval to tie them up subject to approval by the Tribe and subject to due diligence, appraisals, etc. This makes sense for the business and is a way to grow the business as we are limited in increasing revenue by the supply of hotel rooms we have.

There was then some discussion about the modifications to the Casino and moving administrative activity off site and reallocate the Casino space.

Frederico's investment is about $5M. The returns are about 50%. It is a short payback. The hotel rooms are somewhere in the 15 to 40 million dollar range depending on how much you can acquire. We thing the returns is somewhere in the 20 to 40 percent range based upon the gaming. Our assumption is that we could fill about 75% of the rooms with gamblers worth about $250 per night.

For current debt, we are at $80M on our bonds. We have an upgraded rating from Standard and Poors. Our intention would be to call in the bonds. The first call date on the bonds is July. We have been acquiring bonds back as they become available. We could refinance with lower cost debt and we have a much stronger balance sheet and income statement than we did in 2002 when the bonds were sold. We can refinance the bonds and there is some flexibility to fund the additional projects. It still leaves a conservative structure in place. There is a small level of debt compared to the income assets in the equity.

Mr. Brents then responded to questions from the floor. Regarding availability of rooms, the best candidate hotels in the area are those with at least one hundred rooms. With the General Council's

approval, he will look into that possibility. We are not sure what is available but properties that are prospects are the Royal Scandinavian Inn, the Marriott, and the Holiday Inn Express are good candidates. This area is becoming the next Napa and we need to be able to have that capacity. If we don't get the approval, we will probably be going in and buying big blocks of rooms. That is speculative but it makes sense. We need to turn on the marketing in Los Angeles and we need to take care of the guests when they get here.

In response to another question from the floor, the Chairman stated that the only other properties the Tribe has is the 6.9, Mooney, Escobar, and the Numancia. Perhaps a hotel could be built on it. There is about 6 acres total for development. It will take 3 or 4 years or perhaps longer, hopefully less, to get that land into trust. There are restrictions there and if we went to the county there would be density issues. The only candidate property is the Numancia. The Carlson property is under 5 acres and includes part of the hillside.

Mr. Brents said the reason for buying additional hotel space is the urgency of capturing the revenue and the need to take advantage of the opportunity. The Chairman added that acquiring a hotel is an additional source of revenue for the Tribe. It is diversification and is an asset we could buy. Our compact is good through 2020. We don't know what is going to happen after 2020. We have a museum going on and now the youth center that was just approved. After the compact is over, we are going to have additional expenses for all these facilities. As we go into this, we should look at what invest our money in that will give us a return in the future that is not based on gaming.

Elaine Schneider commented that she would have liked to have this information before voting on the 20 some million dollars for the youth center if we need 20 million dollars for a hotel. Reggie Pagaling commented about the cost of hotel rooms and the income it would generate.

Reggie Pagaling made a motion to purchase the Frederico's property. The Chairman said there was more discussion to complete.

The Chairman responded to a question from the floor and stated the Royal Scandinavian Inn was up for sale for about $5M. Hotels in the area have been up for sale. Currently none of them are on the market. Everything is for sale for a price. One hotel did approach us a couple of months ago and asked if were interested in buying. Frederico's is for sale and was recently appraised at $3.5M.

There was additional discussion about the Frederico's property, parking and additional hotel rooms.

David Dominguez commented that if we had a hotel such as what is being proposed, the Tribe could focus on hosting Indian Health, housing, ICWA rather than just gaming.

The Chairman stated you need to be worth $800 a day to get a room comp here at our resort. He added that we do not have 500 rooms that would allow us to comp the $250 per day player. David Brents said the 'A' player is $800 and above, 'B' is between $500 and $800 and the 'C' player is between $250 and $500 a day. A typical Casino visit is 6 hours. If you take a typical visit and add a hotel room, you get two days from the guest. Hotels make money on an average room rate of $120 to $150 per room. Mr. Brents believes we could add significant incremental value to that. The Hospitality industry in the valley should be controlled by the Tribe.

In response to a question from the Chairman, Mr. Brents provided the estimated number of Player's Club members and levels of play. We have a huge data base from which we can market directly to the guest, give them a high value experience and create significant revenue. The Casino in the very near term is not get bigger so we need to get more revenue per guest. Hotel rooms would be one way to do that. There us a large group we are not reaching out to. This is an incredibly successful property. It would be realistic to target taking the revenue to the $300M plus per year level.

Ted Ortega commented this is a good start but to maintain the current income level we need $1B in income receiving a 10% return. The Chairman confirmed this was correct. He stated San Manuel will be breaking ground for a new hotel in Sacramento. They have a hotel in Washington, DC. Tribes are buying things now with their gaming revenue to diversify and assure their income for the future. We can start small and grow. We could look at a 10% rate of return but we could realistically get 15% would be better. A bank told us recently they would loan us half a billion dollars.

We would complete the preliminary title work for having the property placed in trust and complete due diligence in case the Tribe ever wanted to place into trust but our objective here is not to place the property in trust but to build outside assets that will eventually generate revenue for the Tribe.

Maxine Littlejohn commented that space in the lower part of the parking structure is used for storage. This is space could be used for parking. Mr. Brents says every department has extra stuff. These spaces in the basement area and are spaces that are very difficult to use. We use the spaces across the front row for parking but we try to get more use out of it. It is like having a basement. The good news is that we are just busting at the seams.

Ted Ortega asked if there has been any more discussion about expanding the Casino floor. It had been proposed at some point in the past some expansion over the creek might be done. Mr. Brents said they are constantly looking at that. The creek might not be the best way to go. We could use more space. We could use more machines. The Chairman says the return and the finances need to be looked at and relative to the time frame you are looking at. Perhaps using the office space in the building would be preferable to a major expansion. If we had 30 years left on the compact, we would look at it differently. We have just outgrown our space. The Chairman said we have the maximum number of machines, 2000. It might be possible to negotiate with the governor for additional machines.

There was a comment about the lines at Game Cash. Mr. Brents says there are some service issues with Game Cash and their employees. He says they are being addressed.

Carol Clearwater responded to a question about the revenue for Education from Game Cash. She says the fees negotiated on this change go up about $1M. You should get more money than you used to, not less. The ATM fee is increased and the fee on all transactions is higher. The Tribe will be getting more, not less. We also expect our volume to be higher. Ms. Clearwater will bring the exact percents/figures to the next meeting. Fees for Tribal Members will be waived.

Comments were made about how busy it is in the Casino and the absence of cashiers and working kiosks. Mr. Brents says they are working on the problems and the kiosks will soon have an upgrade or fix applied and problems corrected. There will probably be additional kiosks installed. The

In response to a question from the floor, the Chairman said the attorneys working for the Tribe are Glenn Feldman, Larry Stidham, fee-to-trust and the liquor licenses were handled by Brenda Tomaras and Kathy Ogas and Sam Coffman. Sam Cohen is also an attorney.

The new constitution was sent from the Southern California Agency office to the Pacific Regional office in Sacramento and it is in their Government Operations office. We are waiting to hear back from Fred.

On the 6.9 acres, the Chairman reported the concerned citizens' appeal, POLO and POSY, has been dismissed. They have now hired a law firm to and will be filing a law suit in federal court to challenge this decision. They have 30 days in which to file a suit. They have hired an attorney, Theodore Olsen. We are still working on a plan.

Sam Cohen reported on the 5.8 acres and said it is going into trust as undeveloped land and qualifies for a categorical exclusion from having to do an environmental document under NEPA. We have some biologists coming out tomorrow to finish up the CAD-EX and have that sighed of by the Pacific Regional Office Director, Clay Gregory. Then hopefully the Regional Director will sign off the fee-to-trust application.

Ted Ortega commented he has now completed the forms four times. He asked what was going on with them. The Chairman said the IRS gave us wrong instructions for the Form 4469. The Forms must be submitted for the LLC's and the non-LLC's. The old forms were destroyed. Belinda Gaddy gave us wrong instructions and we must complete new forms.

Rudy Romero made a motion to adjourn. The motion carried and the meeting was adjourned.

interest rates are going up. What we did here protects the Tribe from rising rates by locking in the lower rates last year.

Mr. Brents reviewed the upcoming schedule of entertainment and said they were still working on the summer calendar for entertainment. It will be exciting. We will be mailing out the program as soon as it is ready. Check cashing commissions are up significantly. This is due to some changes we made and we now doing this in house. As a result, check cashing commissions to the Tribe are up about $100,000 from this same period last year. The Management Trainees graduated the first part of April. We are very proud of them. They are very excited about their prospects for the future. The response to the program has been overwhelming and a new group will be coming in.

Our focus for 2006 is to increase revenue by 10% and increase service to a gold standard. We should be able to differentiate ourselves from other casinos in Nevada and California with our level of service. We continue to work on it every day. We would like to grow the business in the middle of the week. We have expanded our promotional outreach to the Sacramento Valley. We also want to maintain a top quality facility. We want to maintain a four diamond rating for the facility. Not just the hotel but the entire facility. Mr. Brents then showed some of the marketing material being published in the Los Angeles area. The potential customer from the San Fernando Valley area is worth more per visit than the average Santa Barbara customer. There is a lot of competition in that area but it is a market worth going after. A new concept has been introduced on the floor. The theme is Jurassic Park and they are progressive slots.

Mr. Brents then asked for questions from the General Council. In answer to a question from the floor, Mr. Brents says they are able to gauge response to the marketing effort by measuring play by zip code and may use coupon redemption as another gauge. Because gaming is one of the 10 leading markets to advertise in the US, we need to know the results of our marketing and do have methods to track it.

In response to another question, Mr. Brents says the hourly wage for slot clerks is being lowered from a starting wage of $9 per hour to $5 per hour in an attempt to make it more equitable. The average income for a slot clerk on the floor is $70K per year. He could not quote the exact number of floor clerks who actually make that amount per year and said he would get that information back to the General Council. He stated that on average they do very well. The best and brightest, those employees with the personalities and people skills gravitate to the high tip positions and do really well and to average $60K to $70K per year. He believes he has the study data for this and will get to the General Council.

Those moving to the Federico's property will be the pre-hire staff and applicants and training will be conducted there. Gaming will remain on the Casino property. The policy for having a drink at the Willows was questioned. Customers go into the Willows, order fries to go and have a drink. Who knows if they eat the fries or just toss them? Others go in to the Willows, order dessert and also order a drink. When the dessert arrives, they give it to someone else. Mr. Brents said he would look into this.

Ballot Results - The Chairman then reported the ballot results. The first ballot was for the Tribe to approve a budget, not to exceed $80,000, for a retirement party for Larry Spanne. 96 ballots were counted;

Absentee Ballot of November 2, 2006

Ballot Item #1:

Shall the Tribe approve the purchase of the Royal Scandinavian Inn (RSI) for $19,500,000?

Explanation:

We have to turn away about 1,000 guests per month because we don't have rooms. We need more rooms than we have at our hotel, the Chumash Resort Hotel and Spa. A hotel guest staying overnight at our hotel on site is worth about $1,000 per day. A conservative estimate a guest staying at one of our rooms off site would be worth is about $200 per day. Having more hotel rooms could contribute substantially to our gaming revenue.

Three existing hotel properties were looked at in the valley that met our current, basic needs which are quantity or greatest number of rooms and close proximity to our Casino. The Royal Scandinavian Inn (RSI), by far, meets those needs. It has 133 rooms and is six miles from our Casino. Close proximity is key to capturing casino business. The RSI also has a restaurant, the Meadows, a lounge, 4,000 square feet of meeting space and comes with a liquor license. It also has retail space, a small fitness area, swimming pool and is located on 3.35 acres.

A purchase price of $19,500,000 for the Scandinavian Inn (RSI) was negotiated, down from an original asking price of $25,000,000. The hotel is about 20 years and would need some renovation to bring it up to a four diamond property. We estimate that cost to be between five and seven million dollars. We will need some engineering studies to verify that. To add on to our existing facility would take a minimum of three years and we need additional rooms now. To build a new hotel would take much longer, from seven to ten years. We estimate the cost of new hotel construction to be between $300,000 and $500,000 per room. We spent approximately $300,000 per room to build our hotel. The full investment in this property or the total cost per room for the Royal Scandinavian Inn would be about $200,000. Acquiring this hotel now could actually facilitate revenue growth in 2007.

Owning this property would contribute about $4,400,000 per year to our gaming cash flow. This estimate was arrived at using a 60% occupancy rate and $200 per room per day. The actual occupancy rate for the RSI is running at about 75%. The capital gain over a 15 year period would be about $58,000,000. The rate of return would be around 27%. This adds significant value to what we are able to create for our property.

EXHIBIT "F"

Copy of a letter of May 12th 2008 from Assistant Secretary Carl J. Artman to Congressman Duncan Hunter explaining that the policy and practice of the Department of Interior and Bureau of Indian Affairs is that they do not enforce any promises or agreements made by an Indian tribe seeking transfer of fee land into trust. That once that land is taken into trust the Department is not authorized to take it out, only an Act of Congress can do that

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

TAKE PRIDE IN AMERICA

MAY 12 2008

The Honorable Duncan Hunter
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Hunter:

Thank you for your letter of April 1, 2008, regarding a dispute between the Sycuan Band of the Kumeyaay Nation (Tribe) and the Dehesa Valley Community Council (Dehesa Community) concerning a Tribe's land acquisition program. You have enclosed with your letter copies of a January 10, 2006, letter from the Dehesa Community, and of a January 29, 2007, letter from the Tribe. These letters address the issues of concern that the Dehesa Community has raised with you.

The Dehesa Community would like the Department of the Interior to re-examine a fee-to-trust application for an 82.85-acre parcel of land that was taken into trust for the Tribe in 2004 because the actual use of the land (parking lot for casino) is different from the proposed use at the time of acquisition (housing). We understand that the Dehesa Community is very unhappy with what it is calling the "bait and switch" tactic employed by the Tribe. Although we understand the Community's concern, once land is taken into trust, the Department is not authorized to reconsider its decision because land cannot be taken out of trust without Congressional authorization. In addition, current land acquisition regulations in 25 CFR Part 151 do not authorize the Department to impose restrictions on a Tribe's future use of land which has been taken into trust. *See City of Lincoln, Oregon v. Portland Area Director*, 33 IBIA 102 (1999). To do so would require amending existing regulations in 25 CFR Part 151. The Department is not currently in the process of amending these regulations. In addition, the Department has been reluctant in the past to take any action to eliminate the flexibility that Indian tribes enjoy to change the use of trust lands both because it is an aspect of tribal sovereignty and because it is a needed tool to adapt to changed economic conditions.

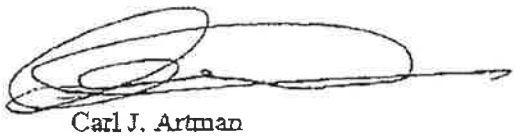
The Dehesa Community also questions whether the use of the 82.85-acre parcel for a parking lot is consistent with a provision of the Tribe's 1999 compact with the State of California which requires any portion of a gaming facility (including a parking lot) to be located on Indian lands on which gaming may lawfully be conducted under the Indian Gaming Regulatory Act (IGRA). Since the 82.85-acre parcel of land is contiguous to the Tribe's Indian Reservation as it existed on October 17, 1988, gaming on the parcel would be authorized under Section 20(a)(1) of IGRA, 25 U.S.C. 2719(a)(1).

The Dehesa Community would also like the Department to "pay attention" to the Tribe's potential future trust acquisition of a specific 1,600-acre parcel because that parcel is identified in the Tribe's 2007 class III gaming compact with the State of California. At this

time, the Department of the Interior has not received an application to take the 1600-acre parcel into trust for the Tribe. If and when that happens, the Department will be vigilant in reviewing the application, especially because the 2007 compact specifically lists that parcel as potentially eligible for gaming.

We hope this information is helpful. Thank you for your interest in this important matter.

Sincerely,



Carl J. Artman
Assistant Secretary – Indian Affairs

EXHIBIT "G"

Copy of excerpts from the Smiley Commission Report and their specific recommendations to the President and Congress to identify which of the Indian communities in Southern California were in need of having land set aside for them by a presidential decree or order of set "aside" to effectively create reservations for them (sometimes called executive reservations) and recommending that no land was needed by the small Indian community located at Santa Ynez who were adequately provided for already.

Smiley Commission Report
and
Executive Order of December 29, 1891.

Box 42

I N D E X

--O--

UNITED STATES INDIAN SERVICE,

San Carlos

May 21, 1904.

Commissioner Indian Affairs
Washington D.C.

Sir

I have the honor to return the report of Mission Indian Commission for re filing in Office

Very Respectfully

D Cornell
Spl Agt

REPORT OF MISSION INDIAN COMMISSIONERS.

240/47

227/369

34993

To the Honorable,

The Secretary of the Interior,

Through the Commissioner of Indian Affairs:--

The undersigned Mission Indian Commissioners most respectfully report as follows;

As soon after their appointment as possible, all the members of the Commission went to California and proceeded to make themselves as familiar with the condition of the Indians and their reservations as possible. To do this they were compelled to travel over many miles of mountain roads and to have many surveys made. We have found a good many difficulties in the way of a satisfactory solution of the questions submitted to us: white men, in many instances, had encroached upon the Indian lands-- especially upon those within the lines of Spanish grants, the Southern Pacific Railroad Company claimed to own the odd sections of land within the reservations near the line of its railroad, settlers had moved on to these railroad lands and made improvements and developed water rights. [illegible] of them had been ejected by the military and the [illegible] suits against the Government or against the officers [illegible]. We have attempted to adjust all

differences, and in some cases have succeeded, as will appear more in detail in our recommendations in regard to individual reservations.

It is our judgment that if our recommendations are adopted it will result in a reasonably comfortable and adequate home for every Mission Indian who cares to avail himself of the provisions made for him on these reservations.

At those reservations where we think it wise to allot the lands at an early date in severalty, we have so recommended. As to the reservations where we do not so recommend, we did not think it best as yet to allot the lands to individuals.

In Southern California the water supply is an important matter. Its use can be greatly economized by the adoption of method and system in the laying out and the construction of the reservoirs and irrigating ditches.

The Indians are good ditchers and have great skill in the building of irrigating ditches, but they do not possess the technical knowledge that will enable them to plan a system of irrigation that shall provide for an economical use of water by so many families as will need it on some of the reservations proposed by us, and so we recommend that there be employed a competent water engineer to plan systems of irrigation for them in such localities as will appear more in detail hereafter.

After pursuing the work of the Commission for about eight weeks, Messrs. Smiley and Moore were compelled to go East and were granted leave of absence for that purpose. Mr. Painter has remained in California continuously causing surveys to be made and getting such information in detail as he could get. Mr. Moore returned in October and Mr. Smiley early in November, and all the members of the Commission since their return have spent all their time in the work of the Commission. We recommend that there be set apart for the Mission Indians of California, the following reservations:

SAN MANUEL.

We recommend that there be set aside for the Indians living on the land March 12th, 1891, the following lands for a reservation to be called San Manuel, viz:

Section twenty (20); also that part of Section thirty (30) bounded on the North and on the East by the section line and on the South-west by the flume; it being a triangular shaped piece of land containing about fifteen acres: All in Township one (1) North, Range three (3) West, S. B. M.

(For a more detailed statement of this proposed reservation, see our report of March 12th, 1891).

THE SANTA YNEZ INDIANS.

"Within the limits of the College Grant, in Santa Barbara County, in the Canada de la Cota, is an Indian village composed of some fifteen familes. These date their possession of the lands they occupy from about 1835, they removing to this place immediately after the Secularization Act, which emancipated them from the control of the Padres.

Grants of land were made to several Neophytes by Governor Michel Toreno, all within the College Grant, previous to its execution, which were excepted by its provisions. Two of these were within the bounds of the present village. These grants were duly executed, and should have been noted in the Mexican record, but are not to be found so recorded.

There are abundant evidences of a long occupancy of this canon, by a much larger number of Indians, and their title to their land by adverse possession might easily be maintained, were it not that the owners of the College Grant present a duly executed written acknowledgement on the part of the Indians that their occupancy was not adverse.

As against this instrument, the declaration of the Indians, that they never paid a cent, nor did they know that they had signed such an acknowledgement of their position as tenants, there would

be difficulty in maintaining their otherwise unquestionable title by adverse occupancy, whatever opinion we might have as to the worldly wisdom of the Bishop who procured this acknowledgment.

The present owners of the grant, while maintaining that the Indians had no legal rights which they will recognize, emphatically declare that they will protect and maintain, to the fullest extent their equitable rights. They declare these Indians shall never be disturbed in their occupancy and use of the lands on which they now live, if they persist in their wish to stay where they are; or they will, preferably, deed to the Secretary of the Interior, in trust for them, five acres of good land, to each family; pipe to it a sufficiency of water for agricultural and domestic purposes, and build for each family a confortable two-room frame house.

This, in the estimation of the Commission, would be better for the Indians than the possessions they now hold, even if made secure to them by a perfect title.

The unwillingness of the Indians to leave their present homes embarrasses this proposition at present.

The Commission, having no power either to set apart the lands now occupied or to compel the Indians to accept the offer made by the Company, feel that they have discharged their duty in the prem-

ises when they recommend, as they do, that the special attorney for the Mission Indians be instructed to take immediate steps to perfect the arrangement proposed by the Company, fearing a change in its control might jeopardize the liberal offer now made.

SAN JACINTO RESERVATION

Near to and adjoining the Town of San Jacinto, is a tract of land containing seven hundred and forty-five (745) acres within the boundaries of a confirmed grant on which is the Indian village of Saboba. A suit was brought against these Indians a few years since, for the purpose of ejecting them from this grant. The case of the Indians was ably represented by Shirley C. Ward, at that time United States special counsel for the Mission Indians, and on an appeal from the Superior Court of the County, the Supreme Court of California, reversed the decision and affirmed the possessory right of these Indians to this land.

Immediately adjoining this tract lies the San Jacinto Reservation, as set apart by an executive order, dated June 19th, 1883. A portion of this was, by executive order, restored to the public domain, for the purpose of allowing certain Indians to homestead it, which has been done.

34993-1708

EXECUTIVE MANSION.

December 29 1891

The report of the Mission Indian Commission, appointed under the act of January 12, 1891 (26 Stat., 712), is hereby approved, except so much thereof as relates to the purchase of lands from and exchange of lands with private individuals, which is also approved subject to the condition that Congress shall authorize the same.

All of the lands mentioned in said report are hereby withdrawn from settlement and entry until patents shall have issued for said selected reservations, and

until the recommendations of said Commission shall be fully executed, and, by the proclamation of the President of the United States, the lands or any part thereof shall be restored to the public domain."

Benj Harrison

Department of the Interior
Washington. D.C.
December. 29 9[illegible]

Under the act of Congress and as above provided, approved

John W. Noble
Secretary

16

100

EXECUTIVE MANSION

December 29, 1891

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Ben Harrison

DEPARTMENT OF THE INTERIOR

Washington, D. C.

December 29, 1891.

Under the act of Congress and as above provided, approved.

John W. Noble

Secretary

(Copy)
W.a.b.

EXHIBIT "H"

Copy of a letter of 27 November 1933 from the U.S. Mission Indian Agency written by Superintendent John W. Dady in which he explains the unorganized Indians at Santa Ynez are predominantly of Shoshone ancestry and that they are occupying 75.75 acres of land which they only have a right of occupation and use of. (consistent with the 1906 judgment)

399
S.Y.

MISSION INDIAN AGENCY,
Riverside, Calif.,
November 27, 1933.

The Honorable Henry E. Stubbs,

Santa Maria, Calif.

Dear Mr. Stubbs:

With reference to your letter of November 25, making inquiry regarding the Indians of Santa Barbara and Ventura Counties, I take pleasure in giving you the following information:

1. We have no reservations in Ventura County and but one, Santa Ynez Reservation, in Santa Barbara County. These are known as Mission Indians.

2. The census taken as of April 1, 1933 shows a population of 92 on the Santa Ynez Reservation.

3. The Santa Ynez Reservation comprises 75.75 acres, and while it is a reservation, the title to the land is not in the United States. The Indians reside on it, and have use and occupancy only. The land was originally owned by the Catholic Church--the College Rancho---,--and later sold to others, butthe Catholic Church made an agreement with the Government permitting the Indians the use and occupancy of the land, and this agreement is binding on later purchasers.

4. These Indians are all of Shoshonean origin, with an admixture of Spanish. The truth of the matter is, they resent being classed as Indians. A former parish priest stated that there were but few of this tribe he called genuine Indians, the others being mixed bloods who do not call themselves Indians, nor do they desire to be so called. Many of them live away from the reservation, and in fact have lost their identity as Indians. Children of these Indians are entered in schools as "Spanish".

5. The birth rate of the full-blooded Indians

"These Indians are all of Shoshonean origin, with an admixture of Spanish. The truth of the matter is, they resent being classed as Indians.

naturally is decreasing, owing to their assimilation into the general population. Conversely, the birth rate of the mixed bloods is increasing, by virtue of the same reason.

6. All Indians are citizens of the United States, and the same laws governs them as any other citizen.

Hoping this information will be of some service to you, and trusting you will call upon me if I can be of further help, I remain,

Very truly yours,

John W. Dady,
Superintendent.

CS:AS

EXHIBIT "I"

Copy of correspondence and redacted investigative reports concerning the practice of diverting federal Indian funds to pay the salaries of B.I.A. employees of the Pacific Region who were to evaluate all fee to trust requests, from the same tribes providing their salary. In addition, under these "consortium agreements" the tribes seeking trust approval furnished the job performance or fitness ratings, and could award "star bonuses" for employees the tribes deemed to be doing a good job on trust applications.

OFFICE OF
INSPECTOR GENERAL
U.S.DEPARTMENT OF THE INTERIOR

May 7, 2013

D.W. Cranford
P.O. Box 794
Plymouth, CA 95669

Re:08-FOI-00012

Dear Mr. Cranford:

This is in response to your facsimile dated November 29, 2007, which was received by the Office of Inspector General (OIG) on the same date, in which you ask for information under the Freedom of Information Act (FOIA), 5 U.S.C. § 552. You ask for a copy of the following records:

1. All reports related to the OIG investigation into a land in trust consortium operating in the BIA Pacific Regional Office. This investigation is referenced in a July 2006 GAO Report06-781 at page 20.

2. Any records or documents related to the use of Tribal Priority Allocation Funds to fund the consortium.

3. All attachments or other documents related to the requested report or related to the OIG investigation into the land in trust consortium operating in the BIA Pacific Regional Office.

4. A list of all government agencies or their personnel that have received a copy of the requested report.

5. All responses from any government agencies or their personnel receiving the report.

A search was conducted and report number PI-PI-06-0091-I was found to be responsive to parts one, two and three of your request. There are 109 pages responsive to the aforementioned parts of your request. Twelve pages are being withheld in their entirety, 53 pages contain some information that is being withheld; and 38 pages are being released in their entirety and six are being referred to Bureau of Indian Affairs.

In regards to part four of your request, on October 6, 2006 OIG penned a Management Advisory for the Associate Deputy Secretary which summarized the results of our investigation. This was the only personnel outside the OIG that received a copy of the investigation. In our advisory, we stated that the Associate Deputy Secretary had 90 days from the date or receipt in which to provide a written response; we have not yet received a response.

Concerning part five of your request; we conducted a search of our indices, but found no documents responsive to these parts of your request. There is no obligation for the OIG to create or compile a record to satisfy a FOIA request. The FOIA only applies to records in the bureau's possession and control as of the date the bureau begins its search for responsive records.

Deletions have been made of information that is exempt from release under the provisions of 5 U.S.C. §§ 552 (b)(5), (b)(6), and (b)(7)(C). These sections exempt from disclosure items that pertain to: (1) inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the agency; (2) personnel and other similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and (3) records of information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information could reasonably be expected to constitute an unwarranted invasion of personal privacy. Exemption (b)(5) was used after consultation with the Department of the Interior's Office of the Solicitor to protect deliberative information which was gathered by the OIG investigators. Exemptions (b)(6) and (b)(7)(C) were used to protect the names of the witnesses interviewed and the information obtained during the investigation.

In addition, the material is exempt from release under the provisions of 5 U.S.C. § 552a(k)(2)of the Privacy Act, pertaining to investigatory material compiled for law enforcement purposes.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. § 552(c) (2006 & Supp. IV (2010). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

If you disagree with this response, you may appeal the decision by writing to the following no later than 30 workdays after the date of the final response:

FOIA Appeals Officer
U.S. Department of the Interior
1849 C Street, NW
MS-6556
Washington, DC 20240

The FOIA Appeal Officer's facsimile number is 202-208-6677. Your appeal should be filed in accordance with the regulations set out in 43 C.F.R. §§ 2.57-2.64, a copy of which is enclosed.

As part of the 2007 FOIA amendments, the Office of Government Information Services (OGIS) was created to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to

handle requests made under the Privacy Act of 1974. You may contact OGIS in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road
College Park, MD 20740-6001
E-mail: ogis@nara.gov
Web: https://ogis.archives.gov
Telephone: 202-741-5770
Facsimile: 202-741-5769
Toll-free: 1-877-684-6448

However, should you need to contact me, my telephone number is 703-487-5322, and the facsimile number is 703-487-5406.

Sincerely,

Tara Walker
Program Analyst

Enclosure

All redactions are based on FOIA exemptions (b)(6) and (b)(7)(C) unless marked otherwise.

United States Department of the Interior

OFFICE OF INSPECTOR GENERAL
Washington, DC 20240

NOV 28 2005

Memorandum

To: Secretary

From: Earl E. Devaney
Inspector General

Subject: California Fee To Trust Consortium

The Office of Inspector General (OIG) was recently provided a copy of an unsigned Memorandum of Understanding (MOU) between the Bureau of Indian Affairs Pacific Regional Office (BIA-PRO) and "California Fee To Trust Consortium Tribes." The MOU describes a process by which the BIA-PRO "re-programs" Tribal Priority Allocation (TPA) funds back to BIA-PRO to hire employees dedicated to processing Consortium members' fee to trust applications.

In addition to some profound conflict of interest concerns, the description contained in the MOU suggests the very real potential that BIA-PRO is improperly augmenting its appropriations with funds earmarked for distribution to tribes.

The MOU cites 25 U.S.C. §123c as authority for this "Project." Our initial review of this statute finds no authority for BIA to receive funds from tribes – for this, or any other, reason. We are left with the view that BIA-PRO is providing preferential treatment to tribes who "contribute" to BIA-PRO a minimum of $3,000 per year for three consecutive years.

While the OIG Office of Investigations has opened an investigation, I would request that you review the genesis, legal authority and propriety of this "Project," and, if appropriate, suspend the "Project" pending the results of our investigation.

I would appreciate being kept apprised of any findings you may make or actions you take. I would also appreciate it if you would direct BIA-PRO to secure and protect all documents related to this matter until OIG investigators review them.

All redactions are based on FOIA exemptions (b)(6) and (b)(7)(C) unless marked otherwise.

Office of Inspector General

Office of Investigations
U.S. Department of the Interior

Investigative Activity Report

Case Title	Case Number
California Fee to Trust Consortium MOU	PI-PI-06-0091-I
	Related File(s)
Case Location Sacramento, California	Report Date December 13, 2005
Report Subject [redacted] Interview	

DETAILS

On December 11, 2005, [redacted] – Division of Indian Affairs, contacted Special Agent [redacted] after receiving the Inspector General's November 28, 2005 memorandum to the Secretary of the Interior regarding the California Fee to Trust Consortium. [redacted] notified [redacted] of a December 2004 e-mail exchange on this subject between herself and others in the Office of the Solicitor (SOL). Interviewed December 12, 2005, in her Main Interior Building office, [redacted] offered the following information:

[redacted] provided a copy of an e-mail exchange, dated December 7 and 8, 2004, with [redacted] On December 7, 2004, [redacted] notified [redacted] that she was reviewing a "proposed agreement between the Midwest region, BIA and a consortium of tribes in the Midwest Region which proposes the Tribes will provide funding to the BIA for additional staff at the Regional Office to process applications to place land in trust." In this e-mail [redacted] also pointed out that "[T]he Pacific Region of the BIA (Sacramento) already has such an agreement in place and this agreement is modeled after that one." [redacted] notified [redacted] because of the potential impact this Memorandum of Understanding (MOU) may have on the SOL's time. [redacted] forwarded this e-mail onto [redacted]

[redacted] responded to [redacted] and [redacted] the same day she received this e-mail, stating "[redacted] responded to this message on December 8, stating [redacted] She then explained that she would be citing [redacted] in the Midwest Region MOU because "[redacted] She concluded her explanation by stating [redacted] I was planning on giving my comments back to Terry [Verdin – BIA Midwest Regional Director] today."

Reporting Official/Title	Signature
[redacted] Special Agent	

Distribution: Original – Case File Copy - SAC/SIU Office Copy – HQ Other:

All redactions are based on FOIA exemptions (b)(6) and (b)(7)(C) unless marked otherwise.

Office of Inspector General
Program Integrity Division
U.S. Department of the Interior

Report of Investigation

Case Title	Case Number
California Fee to Trust Consortium MOU	PI-PI-06-0091-I
Case Location	**Report Date**
Sacramento, California	September 20, 2006
Subject	
Final Report of Investigation	

SYNOPSIS

On November 10, 2005, the Department of the Interior's Office of Inspector General received an unsigned Memorandum of Understanding (MOU) between the Bureau of Indian Affairs Pacific Regional Office (BIA-PRO) and "California Fee To Trust Consortium Tribes." The MOU describes a process by which the BIA-PRO "re-programs" Tribal Priority Allocation (TPA) funds back to BIA-PRO to hire federal employees dedicated solely to processing Consortium members' fee-to-trust (FTT) applications.

This MOU created a Consortium Oversight Committee (hereinafter "Committee"), comprised solely of tribal representatives, that possesses a wide array of powers and authority with respect to the consortium staff (federal employees). Additionally, the funding structure of the MOU, based predominately upon the tribes' election to redirect their TPA funds to the program, creates a situation where the tribes are literally paying the salaries of federal employees. The ability of an all-tribal body to influence the selection, performance awards, and duties and responsibilities of the federal consortium staff—coupled with the fact that the tribes control the purse strings from which the consortium staffs' salaries are dependent—results in a patent perception of a conflict of interest. This investigation has found this appearance of a conflict of interest to be, in fact, real. In addition to the conflict of interest issue, violations of the Privacy Act were also identified in relation to the screening of federal employment applications by private persons (Committee members).

Regarding the legality of the consortiums, a recent legal opinion rendered by the Office of the Solicitor (SOL) determined that the consortiums do not "violate the government-wide ethics rules or appropriations laws"; however, the opinion recommended that "BIA discontinue the fee-to-trust consortiums, as they are currently structured."

BACKGROUND

According to BIA-PRO Deputy Director Amy Dutschke, in 2000, BIA-PRO had "over 300" FTT applications backlogged (**Attachment 1**). It was not a primary responsibility of any BIA-PRO employee

Reporting Official/Title	[redacted]
[redacted]	
Approving Official/Title	
Alan F. Boehm, Director, Program Integrity Division	

Distribution: Original – Case File Copy - SAC/SIU Office Copy – HQ Other:

to process these applications, but rather a low priority, collateral duty of those employees working within the real estate division. Indeed, it was considered a "big deal" when an application was processed and adjudicated. The California tribes were unhappy about this large backlog; therefore, BIA-PRO met with the Californian tribes several times in an attempt to figure out a solution to this issue. As a result of these meetings, Dutschke and former BIA-PRO Regional Director Ronald Jaeger "worked with the tribes" in creating the MOU between BIA-PRO and the California Fee to Trust Consortium Tribes **(Attachment 2)**.

No one person drafted the MOU, but rather it was drafted by a "conglomerate" of persons from the tribes and BIA-PRO. Tribal counsel participated in drafting the MOU, whereas the Department of the Interior's (DOI) SOL was not consulted in drafting the MOU, nor were they asked to review the final MOU draft. Dutschke does not believe the possibility of having SOL review the document "ever came up" during BIA-PRO's discussions concerning the MOU. Jaeger is uncertain whether the SOL reviewed the original MOU in 2000. In retrospect, he stated that it was "pretty stupid" of him to not ensure the MOU was reviewed by SOL; however, he stated that the SOL certainly was aware of the program and "knew what [BIA-PRO] were doing" **(Attachment 3)**.

After consultation with the tribes, it was decided that the consortium tribes were willing to "give up" certain amounts of their TPA funds so that BIA could hire "professional staff" to assist in the processing of consortium FTT applications. The tribes that decided to join the consortium elected to "re-direct" TPA funds that were earmarked for the individual tribes to fund the FTT program. Each California tribe was then given the option to join the consortium. The original MOU was in effect for 3 years, beginning with fiscal year (FY) 2000 through FY 2002. Each tribe electing to join the consortium was required to donate a minimum of $3000 TPA per year and to commit to making these donations for the life of the agreement (3 years); there was no maximum donation. Accordingly, one consortium tribe could donate a total of $9,000 over the 3-year life span of the MOU; whereas another tribe could donate unlimited amounts of TPA funds to the program (e.g., Santa Rosa tribe donated $100,000/year, totaling $300,000 for all 3 years).

This MOU was renewed for 3-year terms, with minor modifications, in 2002, and then again in 2005. The current MOU in place runs from FY 2006 through FY 2008. When the MOU terminates at the end of each 3-year period, all Californian tribes are provided the opportunity to participate (or not) in the new MOU. Accordingly, tribes that were members of the initial consortium could elect to not re-join the consortium if they no longer had an interest in the program (e.g., they had all of their FTT applications processed during the first 3 years of the program). In the same vein, if not enough of tribes elect to join the program and redirect their TPA funds to BIA-PRO, the MOU would not be renewed since it is dependent upon TPA funds.

The redirected TPA funds donated to the program are used to hire BIA federal full time equivalent (FTE) positions, which are designated as "consortium staff." Their sole duties and responsibilities are to review and process tribal FTT applications that are submitted by consortium member tribes. Under the MOU, these federal employees are forbidden to perform any work on non-consortium tribe applications. In addition to processing Notices of Application to the public, the consortium staff reviews the FTT applications' title status and conducts environmental reviews of the involved properties. Additionally, realty specialists review the applications for compliance with the criteria listed under Title 25 of the Code of Federal Regulations, section 151 (25 CFR 151), and make recommendations as to whether the applications satisfy these criteria. Finally, once the review process is completed, the consortium staff makes a recommendation to the adjudicating official whether they believe the application should be accepted into trust or not; according to Dutschke, "Generally, these recommendations are favorable."

The consortium staff act as facilitators in reviewing the FTT applications; they work closely with the tribes by informing them if their applications are insufficient in a specific area and making recommendations to the tribes as to what they need to do in order to receive a favorable recommendation. As a general rule, the tribe members confer with BIA about the application prior to submitting an application. A premium service is "definitely" being provided to consortium FTT applications, according to Dutschke, "It is expected," and the "whole purpose" is to ensure these applications receive a favorable recommendation.

Once the applications receive a favorable recommendation, the consortium staff prepares the proposed Notice of Decision for signature by the respective adjudicating official. Generally, an area superintendent is the adjudicating official for "on-reservation" applications, the regional director is the adjudicating official for "contiguous" applications, and BIA Washington Central Office (WCO) is the adjudicating official for "off-reservation" and gaming applications. The BIA-PRO consortium staff processes off-reservation and gaming applications; however, these applications are ultimately forwarded to WCO for adjudication. Once adjudication is made, this decision may be appealed to the Interior Board of Indian Appeals.

BIA currently has 10 FTE positions dedicated to this MOU, 7 of which are currently filled and 3 remain vacant.

Under the original MOU, valid from FY 2000 through FY 2002, 55 tribes elected to participate by donating $2.2 million of TPA funds. From FY 2003 through 2005, 60 tribes participated by donating $1.9 million of TPA funds. Under the current MOU, from FY 2006 through 2008, 42 tribes have elected to participate by pledging TPA donations totaling $1.4 million **(Attachment 4)**.

During the 2000-2002 term of the MOU, 5,553.01 acres were placed into trust on behalf of the consortium tribes. From 2003 through 2005, 5,874.5 acres were placed into trust on behalf of the consortium tribes. As of January, 2006, 11.9 acres were placed in trust on behalf of the consortium tribes for the 2006-2008 term of the MOU **(Attachment 5)**.

DETAILS

In November 2005, a copy of the MOU was provided to DOI's Office of Inspector General (OIG). After review of the MOU, the DOI Inspector General issued a November 28, 2005 Memorandum to the DOI Secretary requesting a review of the "genesis, legal authority and propriety of this 'Project'" **(Attachment 6)**. At that time, DOI-OIG initiated its own investigation into these matters.

MOU Consortium Oversight Committee

Dispute Resolution

The California Fee to Trust Consortium MOU represents a legally binding agreement/contract between the California Fee to Trust Consortium Tribes and BIA-PRO. Under the MOU, a Committee "comprised of Consortium members, will have oversight of the Project and the obligation to assure that the terms of this Memorandum of Understanding are met." This Committee is "made up of nine (9) elected Tribal Officials representing their respective region"; there is not any federal government representation on this Committee.

Under the 'Consortium Employees' section of the MOU, the "[P]arties 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." Under the 'Dispute Resolution' section of the MOU, "[A]ny 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 decision of the Committee is final."

When interpreted in conjunction with one another, these two sections of the MOU provide the all-tribal Committee the authority to determine the "duties and/or responsibilities" of the BIA-PRO federal employees if a conflict were to arise regarding those duties and/or responsibilities. The only apparent restriction on this authority over the federal employees is that the Committee cannot dictate duties and responsibilities that run afoul of BIA-PRO personnel policies.

When asked about why BIA-PRO would grant such authority to a committee that does not include any federal representation, BIA-PRO Regional Director Clay Gregory acknowledged that the contract, as written, does apparently grant such powers to the Committee. Gregory stated, however, that he would not allow the Committee to direct BIA-PRO federal employees to perform any duties averse to their obligations as government employees (**Attachment 7**). He stated he would be obligated to override the Committee in such a circumstance, regardless of the fact that his actions could technically represent a breach of contract. Gregory stated that he is unaware of any conflict occurring since the inception of the MOU that would have invoked "dispute resolution." He stated that, in practicality, the consortium staff is managed by BIA-PRO officials and not the Committee. Ultimately, however, he acknowledged that the Dispute Resolution section probably needs to be "re-visited."

Employee Selection

Regarding the selection of consortium staff, under the MOU:

> - It is agreed that the process for selecting Consortium staff for filling of the Consortium positions will include the direct participation of the Committee.
> - Such participation may include, but may not be limited to, the development of position descriptions, and interviewing prospective candidates.
> - The Oversight Committee has the authority to make recommendations to the Bureau regarding the filling of open positions.
> - All federal personnel rules and regulations will apply to this process.

According to Dutschke, the Committee did review and provide input in the drafting of the initial position descriptions (PDs) for the consortium staff positions. The PDs were then classified by BIA's personnel office. – Need these!

According to Dutschke, BIA issues the announcements for vacant positions, receives applications, and produces a list of certified candidates. Dutschke then stated that BIA-PRO officials select an employee from the certified list of applicants after reviewing their applications. After the BIA-PRO official makes a selection, the selected candidate's name is then put before the Committee for their review and recommendation. The ultimate decision whether to select the applicant rests with BIA-PRO.

Former BIA-PRO consortium [redacted] described the consortium selection process a bit

differently **(Attachment 8)**. According to [redacted] when he was reviewing a certified list of top candidates for consortium positions, he would "sit down with the Committee," and together, they would jointly review the applications and make a selection. In one instance, [redacted] and the Committee decided to conduct telephone interviews of the three applicants on the list. Members of the Committee helped draft the interview questions and "sat in" on the telephone interviews; none of the three applicants were ultimately hired and the position was re-advertised.

According to [redacted] BIA-PRO personnel made position selections without consulting with the Committee only when the position advertised was for a "clerk" or a "term" position; in these cases, the Committee provided prior approval for the selection. Conversely, all realty specialist positions were selected only after the Committee reviewed the applications with [redacted] called this Committee review of applications a "courtesy."

Regarding consortium staff selection, consortium [redacted] stated that she was told by [redacted] that the Committee's approval was "the final word," which BIA-PRO did not overrule **(Attachment 9)**. In fact, she claimed that [redacted] had told her the Committee recently did not approve one of his applicant selections for an environmental specialist consortium position; as a result, [redacted] had to re-announce the position. Upon [redacted] presenting another selected applicant to the Committee for an office automation position, the Committee determined that the consortium did not need to hire such a position; this resulted in BIA-PRO cancelling the announcement without hiring the selected applicant.

[redacted] refuted this claim of [redacted] by stating that the Committee never overrode a selection he made. However, in one instance, the Committee made a selection recommendation that [redacted] overruled. As to the specific example cited by [redacted], regarding the environmental specialist position, [redacted] stated that he was not the hiring official for such a position, but rather BIA-PRO [redacted] was responsible for selecting all environmental specialist positions.

[redacted] is the selecting official for the environmental specialists that work for the consortium **(Attachment 10)**. Since the inception of the consortium MOU, [redacted] has hired three environmental specialists: [redacted], and [redacted]. [redacted] selected [redacted] after a panel, including all-tribal Committee members, reviewed applications of candidates listed on the certification list. [redacted] selected [redacted] after reviewing his application with the assistance of an all-federal employee panel; as opposed to the panel that reviewed [redacted] application, no Committee members were present on the panel that reviewed [redacted] application. After [redacted] was selected by [redacted] his selection was put forward to the Committee for their recommendation. In 2005, [redacted] selected [redacted] after reviewing his application with an all-federal employee panel. [redacted] selection was provided to the Committee for their recommendation during a consortium meeting; although, [redacted] was not present at the consortium meeting and is not certain whether the Committee was provided [redacted] application for review.

The Committee has never made an unfavorable recommendation regarding [redacted] selection of an environmental specialist for the consortium. [redacted] was asked what would happen if the Committee were to make an unfavorable recommendation regarding one of the applicants [redacted] selected. [redacted] stated that BIA-PRO would consider the Committee's input; however, BIA-PRO would make it clear to the Committee that this is a federal position.

Employee Performance

Regarding consortium staff performance, under the MOU:

> - It is further agreed that participating tribes may submit documentation to the Committee and PRO-LRS [supervisory realty specialist] concerning the performance of the Project employee's duties under this Agreement and that the PRO-LRS and the Committee shall give such documentation due consideration with respect to conducting employee performance evaluations.
> - Recommendations for incentive or star awards will be brought forward to the Fee to Trust Consortium Oversight Committee.

According to Dutschke, generally, the Committee has agreed with BIA-PRO's award proposals for consortium staff. The Committee did, however, once refuse to approve an award proposed by BIA-PRO for a consortium employee because the Committee did not want to have TPA funds used to pay the cash award. Since that time, the cash used to pay these awards has come from BIA-PRO administrative account funds. Regarding employee performance, if the Committee has a problem with a consortium employee, they will contact the supervisory realty specialist and discuss their concerns. Consortium staff are aware that the all-tribal Committee has input in their performance evaluations and potential awards. Dutschke acknowledges that there could be the perception that the tribe's input on these awards may influence an employee's judgment to favorably recommend a tribe's application. However, Dutschke claims the Committee does not perform employee evaluations or ultimately decide who receives an award, but rather are simply consulted on these matters and make recommendations. The Committee does not "sign off" on employee evaluations.

According to [redacted] during his tenure as supervisory realty specialist for the consortium, recommendations for awards for consortium staff were proposed by an agency superintendent or the employee's supervisor. Committee members did not participate in establishing performance standards or goals for the consortium staff, and they did not participate in performance reviews of the staff. However, the Committee could submit written assessments of the staff to BIA-PRO, which were given due consideration. While [redacted] was working for the consortium, the Committee submitted only one negative written assessment on a consortium employee; this employee had also received a poor employee evaluation from [redacted] for insubordination. The Committee rarely sent in positive assessments of consortium staff.

Regarding whether an employee may be influenced to favorably recommend an FTT application in order to receive a performance award, all interviewed indicated that it is the underlying goal of the consortium staff to favorably recommend all of these applications to the adjudicating official; they act as facilitators in processing these FTT applications, not as objective third party decision makers. Accordingly, since the core objective of their position is to have all these applications approved, the potential for receiving an award provides little incentive to be so influenced.

However, according to [redacted] the ability of the Committee and tribes to influence performance awards of consortium staff does affect the treatment of the FTT applications by the consortium staff. The tribes that donate higher amounts of money to the program "definitely receive more attention" than tribes that donate less money to the program. The FTT applications from the tribes that make high donations to the program "are worked on immediately by [redacted]" while other applications are "put on the back burner." [redacted] believes that [redacted] puts more effort towards these applications because the successful processing of these applications will result in more gifts and award recommendations for

[redacted] Conversely, the FTT applications of tribes that only donate the minimum are directed to lower level consortium staff, such as [redacted]

Consortium Realty Specialist [redacted] was unaware that the MOU provides for the Committee to review BIA's award proposals for consortium staff **(Attachment 11)**. She stated that had she known this, it would affect her decision making in processing consortium FTT applications.

MOU Funding Structure

The MOU is predominately funded by TPA funds donated by the consortium tribes. Along with the program's base operating expenses, these TPA funds are used to pay the salaries of all of the consortium staff. Consequently, if the tribes stopped donating TPA funds to the program, all of those interviewed acknowledged that the consortium employees would be subject to a Reduction in Force (RIF), and the program would cease to exist.

When asked why these positions were not originally classified as "term positions" (rather than FTEs) since they were dependent upon funds derived by a contract requiring continuous renewal, Dutschke stated that former BIA-PRO Director Jaeger decided that "he would run the risk" of not making the positions term in order to better attract qualified candidates. At that time, they discussed the possibility of making these term positions, yet they both believed that many experienced federal employees would not apply to a term position. Jaeger confirmed that he decided to "take the risk" to hire the consortium staff as FTEs rather than term positions because of his belief that BIA-PRO would be able to better attract qualified applicants. Jaeger hoped that Congress would appropriate funds for these employees once the program became successful and demonstrated there was a need for such staff. Both Dutschke and Jaeger acknowledged that a RIF would occur if the tribes decided to stop redirecting their TPA funds to the program.

Regarding the potential for a RIF, Dutschke stated that higher grade consortium employees would not actually be out of a job because they would "bump" lower grade employees within the region, who, in turn, would "bump" even lower grade employees, and so on. Accordingly, BIA-PRO would lose several GS-5/7 FTE positions if the TPA funds became unavailable to pay the GS-13, GS-12, and GS-11 consortium FTEs. After acknowledging that these consortium positions were more tenuous than other appropriated positions, Dutschke was asked if the candidates for the consortium positions were notified of this tenuous funding structure. Dutschke stated that the funding nature of the positions was not identified in their respective job announcements.

Current consortium [redacted] stated that she was not aware of the funding structure of her job at the time she accepted her consortium position in 2001 **(Attachment 12)**. [redacted] inadvertently learned TPA funds were being used to pay her salary a few months after starting her consortium job. After she discovered this fact, she became anxious about the nature of the funding used to pay her salary. At the end of the first 3-year term of the MOU (2002), there was "talk" of a potential RIF of the consortium staff if the tribes decided to not renew the MOU for another 3-year term. This RIF potential mad[redacted] "nervous" about her job stability and caused her to perform personal research on RIF rules and regulations in order to familiarize herself with the process. At the time of her interview by OIG [redacted] did not possess as much anxiety about her job stability because she learned from her personal research that her seniority will be taken into account in any RIF process. [redacted] further expressed comfort in her position's financial stability by noting that the MOU has been successfully extended two times since its inception in 2000.

As with [redacted], BIA-PRO did not inform [redacted] that her new position's salary would be funded by TPA donations prior to her acceptance of the consortium job in [redacted]; it was not mentioned in the job announcement. Prior to accepting her consortium position, [redacted] was a GS-5 FTE with BIA in Albuquerque, NM; she was hired as a GS-7/9/11 realty specialist for the consortium. [redacted] assumed that she would be "working for BIA, not for the tribes." A few months after accepting her consortium position, when she learned how her position was being funded, she asked her supervisor, [redacted] what would happen if the tribes decided to stop redirecting TPA funds to the program. [redacted] told her, "We will be out of a job." [redacted] stated that she would not have applied, nor accepted, the consortium position, regardless of the grade jump, if she knew of its funding structure.

[redacted] was hired by BIA-PRO as a GS-7/9/11 consortium realty specialist in May 2005. Prior to accepting her current position, [redacted] was employed as a GS-5 FTE realty clerk with BIA in Oklahoma. Similar to [redacted] and [redacted] BIA-PRO did not notify [redacted] that her new position's salary would be funded by TPA monies; the job announcement she applied under made no mention of this funding structure **(Attachment 13)**. Her original supervisor, [redacted], told her that her salary was funded by TPA funds shortly after she moved to California and began working for the consortium. This revelation, that she could lose her job if the TPA funding stopped, was "kind of scary." If BIA-PRO informed her of this funding structure, [redacted] stated, unequivocally, that she would not have left her home in Oklahoma and her FTE position, in order to move to California. At the time of her interview, [redacted] was on family leave at her father's home in Oklahoma in preparation to give birth to her first child within the week; this upcoming significant life event has exacerbated her anxiety regarding her job's financial stability.

During his interview, [redacted] confirmed that a RIF of all consortium positions would need to occur if the redirection of TPA funds to the program were to cease. [redacted] was not personally concerned about his job security when he supervised the program because he knew his seniority would ensure he would not be jobless. The potential for a RIF of the consortium staff under him did, however, cause [redacted] a substantial amount of stress and anxiety because, as their supervisor, he was the person responsible for "negotiating with the tribes" every 3 years to obtain the necessary funding to renew the program; he knew that if he failed to successfully negotiate this funding, his staff would be subject to a RIF. In fact, [redacted] admitted that this stressful obligation led to his decision to seek a different job outside of the consortium after he successfully renewed the MOU in 2005. He further emphasized the high degree of anxiety this obligation created by pointing out that the first consortium supervisor [redacted] similarly decided to leave the consortium shortly after renewing the MOU in 2002 because of the stress and anxiety she endured during the funding negotiation process. During her interview, [redacted] confirmed she retired in 2002 after renewing the MOU as a result of the stress and apprehension she felt about the possibility of her staff losing their jobs if she failed in negotiating the funding needed to renew the MOU **(Attachment 14)**.

[redacted] was asked whether the job announcements advertised for consortium positions indicated the funding structure of the position, [redacted] stated that he "didn't think so." [redacted] was then asked if he thought it "fair" that these announcements were not informing job applicants that these positions are not based upon appropriated funds, but rather are subject to the need for continuous funding renewal, especially in light of the fact that these candidates were often leaving appropriated FTE positions. [redacted] admitted, in retrospect, he did not believe it to be "fair." In fact, he stated, as [redacted], he planned on ensuring future BIA-MRO consortium staff announcements do contain language that identifies the nature of the job's funding (BIA-MRO has a similar MOU, discussed hereinafter).

According to Dutschke, Gregory, [redacted] and [redacted] a consortium tribe does not receive preferential treatment commiserate with the amount of TPA funds they donate to the program; whether a tribe donates $3,000 per year, or $100,000 per year, their respective FTT applications are similarly processed in a first-in-first-out (FIFO) approach by consortium staff. [redacted], however, stated that she feels certain that tribes who donate large amounts of TPA funds do receive better treatment than tribes who donate less money to the program. As noted above, [redacted] stated that [redacted] pays more attention to applications from higher donating tribes because their successful processing will result in more gifts and award recommendations. In support of this belief, [redacted] stated that during a recent July 2005 consortium meeting, [redacted] and [redacted] received gifts from the tribes because "a lot of land was [redacted] All three of these BIA employees received ceremonial blankets from the tribes for their help in having these lands placed into trust. [redacted] confirmed that he received a ceremonial blanket at this meeting.

Beyond the incentive of award recommendations, [redacted] also feels that the TPA funding structure results in the consortium staff, including herself, feeling that they are working directly for the tribes as opposed to working for the government. [redacted] is regularly reminded by her BIA-PRO supervisors that "we work for the tribes" and that the tribes "pay our salaries and expect results." This mantra has made [redacted] feel as if the consortium tribes "are breathing down her neck" to get the applications processed and approved. [redacted] stated that she often receives direct telephone calls from consortium tribal attorneys, sometimes on a daily basis, to monitor her processing of their tribe's applications. In consideration that her salary is literally "being paid by the tribes," she feels beholden to respond to these tribal attorneys with celerity. As noted above, at the time of her interview, [redacted] was on family leave at her father's home in Oklahoma in preparation of giving birth to her first child. As an example of the pressure placed on her because of the MOU's funding structure, [redacted] stated that the morning prior to her interview, she received a telephone call from her current supervisor [redacted] questioning when [redacted] planned on returning to work in California. During this conversation, [redacted] told [redacted] that "If we don't produce, we will lose our jobs," and that [redacted] absence from work is resulting in a negative impact on the consortium staff's productivity. In response, [redacted] told [redacted] she would travel back to California as soon as physically possible after giving birth to her child.

Non-consortium FTT applications v. consortium FTT applications

BIA-PRO consortium staff are allowed to only work on consortium FTT applications; they are not permitted to spend any time processing non-consortium FTT applications. Several tribes that elected to not participate in the consortium have submitted FTT applications to BIA-PRO. According to [redacted] these non-consortium applications are processed by one realty specialist [redacted] as a collateral duty. Prior to the advent of the consortium MOU, all FTT applications were processed by [redacted] and one other realty specialist in this manner (which resulted in the large backlog of applications).

During her interview [redacted] confirmed that she is the only person assigned to process non-consortium FTT applications, which she handles as a "low-priority" collateral duty **(Attachment 15)**. Similar to how consortium staff process consortium applications [redacted] processes non-consortium applications on a FIFO basis; however, some applications may move ahead of others if there are delays with certain applications (i.e., waiting for information from a title company). [redacted] does not maintain a database of the non-consortium FTT applications that would identify application success rates, process timelines, dates, or total amounts of acres placed into trust. Accordingly, a comparison of non-consortium applications with consortium applications was not possible. [redacted] indicated there is a current backlog of non-consortium applications.

[redacted] possesses the most experience and knowledge of all realty specialists at BIA-PRO (including consortium staff) regarding FTT applications. Accordingly, [redacted] is called upon to review all finalized consortium applications prior to their submission to the regional director for adjudication. [redacted] reviews the application in order to ensure it is thorough and complete. In contrast with the restriction preventing consortium staff form working on non-consortium applications, [redacted] is allowed to work on consortium applications.

[redacted] explained that tribes have different reasons for not joining the FTT consortium. One reason she articulated was that many "on-reservation" FTT applications are handled at the field office level and thus do not need the regional-level consortium staff to process their applications; however, all applications are forwarded to the regional level if there is any controversy with the application. The other reason some tribes do not join the consortium is that they may not currently be interested in having lands placed into trust (e.g., they may have already had their FTT applications successfully processed).

Since the advent of the MOU, understandably, the processing time for consortium FTT applications has improved. Concomitantly, [redacted] claims the amount of time it takes for her to process non-consortium FTT applications has also improved because of her diminished workload.

In 2002, BIA-PRO's congressional appropriations included $323,000 for the hiring of five FTE GS-5 positions to assist with the backlog of FTT applications. According to Dutschke, this money was divided amongst all PRO tribes as individual "shares." Based upon the determined share amounts for each of the tribes participating in the FTT consortium, $175,000 was directed to the funding of the consortium staff. The share amounts for all non-consortium tribes (totaling $98,000) were directed to the BIA-PRO's region-wide realty fund, to the benefit of all tribes in BIA-PRO (including consortium tribes). The remaining share amounts, totaling $50,000, were directed to the California Trust Reform Consortium for use by their member tribes.

[redacted] confirmed that BIA-PRO directed $175,000 of these appropriated funds to the FTT consortium program in 2003, 2004, and 2005. [redacted] also stated, however, that the entire amount of the appropriation ($323,000) was funneled to the FTT consortium program the first year BIA-PRO received the appropriation (2002). After this first year, it was determined that in order to be more equitable, these funds needed to be distributed to each tribe as a "share" rather than using the entire amount solely for the benefit of the consortium tribes. As such, $175,000 is the representative "share" amount of the consortium tribes, and thus this amount is now directed to the FTT consortium program.

In comparing the approval rates of the FTT applications for both consortium and non-consortium tribes, it was discovered that all FTT applications receive favorable adjudications if they reach the decision stage in the process. According to Dutschke, [redacted] and [redacted] Regional Director Gregory has never denied an FTT application that reached his desk for adjudication because all of the decision makers at BIA-PRO, including Dutschke and Gregory, are aware of the various applications and any potential issues with the applications during the processing stages of the applications. Accordingly, if an application has a problematic issue, it would be dealt with prior to the application reaching the adjudication stage; if an application has an issue that cannot be overcome, the tribe simply withdraws the application since they know it will not be adjudicated favorably. Accordingly, once an application reaches Gregory's desk for adjudication with a favorable recommendation from the BIA-PRO staff, Gregory readily approves the application.

BIA Midwest Region's MOU

In 2004, BIA-MRO Regional Director Terrance Virden proposed adopting an FTT consortium MOU, similar to BIA-PRO's MOU, in order to address the large backlog of FTT applications in BIA-MRO (**Attachment 16**). Unlike BIA-PRO, [redacted] requested SOL to review the MOU prior to its utilization in BIA-MRO. This review was conducted by Minneapolis Field Solicitor [redacted]

[redacted] noted in her interview that she identified the following problems in BIA-PRO's MOU:

- The need to add BIA employees to the consortium committee
- The need for consortium employees to be covered under Title 5 and work for the BIA as a federal employee
- The need to limit the consortium committee's authority to tribal issues (**Attachment 17**).

[redacted] provided her review of the MOU in the form of a three-page memorandum to [redacted] on December 8, 2004 (**Attachment 18**). This review did not address the validity of the underlying legal authority cited in BIA-PRO's MOU; however, additional authorities were cited in BIA-MRO's MOU.

Similar to the BIA-PRO's MOU, under the BIA-MRO's MOU, the salaries of the consortium staff are dependent upon TPA funding. BIA-MRO Deputy Director Bearquiver stated that these consortium positions would also similarly be subject to a RIF if the TPA funding for the MOU were to cease. Bearquiver also confirmed that BIA-MRO does not list the funding structure of the positions in the respective job announcements; however, he did indicate that he would ensure this notice is provided in any future BIA-MRO consortium job advertisements in light of his recognition that these candidates should be made aware of this tenuous funding structure.

According to Bearquiver, under the BIA-MRO MOU, non-consortium tribes benefit from the FTT program because the realty specialists assigned to work on their applications have a diminished workload. BIA-MRO has four consortium employees that are working on 35-40 consortium applications. Regarding non-consortium applications in BIA-MRO, there are two non-consortium employees processing the applications; one employee spends approximately 75 percent of his time on FTT applications and the other employee processes the applications as a collateral duty.

Legality of Consortiums

On July 7, 2006, SOL issued its legal opinion regarding the legality of the consortiums being utilized in BIA-PRO and BIA-MRO (**Attachment 19**). In the opinion, SOL determined that they "do not believe that the consortiums violate the government-wide ethics rules or appropriations laws." However, the opinion recognized the patent appearance of a conflict of interest created by the consortiums by pointing out that the consortium's structure and use by the tribes and BIA "reflects an insufficient separation of organizational functions, the possibility of the appearance of unfairness of the fee-to-trust application process, and a concentration of resources within regional BIA offices in a way that favors consortium tribes over other tribes served by the regional offices."

Specifically, the opinion identified several different ways in how the consortium structure gives the "appearance of unfairness" in the "approval process" of the consortium tribes' fee-to-trust applications that were directly supported by this investigation. According to the opinion:

The appearance of unfairness also extends to the approval process itself. First, because the functions that would have been performed by the tribes are now performed by BIA employees, the arrangement may have the effect of conferring increased credibility on these applications, as compared to those of other tribes, as they proceed through the final approval process.

Second, these employees review and make recommendations exclusively upon the fee-to-trust applications submitted by the tribes that are essentially funding their positions. Fee-to-trust applications are frequently controversial and their review and processing requires the exercise of substantial independent judgment. The assignment of employees hired directly as a result of the tribes' return of their TPA funds to work exclusively on the applications of these tribes raises serious questions about the independence of judgment expected of BIA employees reviewing fee-to-trust applications submitted by the tribes that have redirected their TPA funds in a way that enabled the employees to be hired by BIA. We do not believe that BIA has instituted or considered any limits or controls on communication between these employees and the consortium tribes, or other measures that could assure that the these employees do not appear beholden or inappropriately connected to the consortium tribes whose applications they are processing.

Third, there is no evidence that BIA has established internal controls to assure that the contractible application functions – those functions subject to the Public Law 93-638 agreement with the tribes – are sufficiently separated from the final review and approval of the applications – the "inherently federal" review function always performed by the BIA. It appears that the employees hired as a result of the consortium agreement perform both types of functions without distinction. As a result, we do not believe BIA can assure that the final decisions on the consortium fee-to-trust applications are fair and unbiased, and also are perceived as such. While we are not aware of any actual instances of a lack of impartiality in the processing of these applications thus far, the absence of sufficient internal controls creates a potential for bias or the perception of bias in the review of the applications by these employees.

Additionally, although the SOL opinion did not determine that the consortiums were "directly inconsistent with the Indian Self-Determination and Education Assistance Act," the opinion stated that "these consortiums are not structured in the conventional sense and could be seen to be inconsistent with the general intent, if not the letter, of the Indian Self-Determination Act." Specifically, the opinion stated:

> [B]y using the funds in the manner intended by the consortium tribes, BIA essentially takes over the function that was intended to be managed by the tribes. Additionally, BIA uses the funds in a way that determines how the work on the fee-to-trust applications of the particular consortium tribes will be performed. This is antithetical to the intent of the Indian Self-Determination Act.

The SOL opinion concluded by recommending "that BIA discontinue the fee-to-trust consortiums, as they are currently structured."

SUBJECT(S)
None.

DISPOSITION

ATTACHMENTS

1. Investigative Activity Report: Interview of Amy Dutschke, dated February 2, 2006
2. Memorandum of Understanding between BIA-PRO and the California Fee to Trust Consortium Tribes
3. Investigative Activity Report: Interview of Ronald Jaeger, dated February 2, 2006
4. BIA-PRO Fee-to-Trust TPA Funding Spreadsheets for 2000-2002, 2003-2005, & 2006-2008
5. BIA-PRO Fee-to-Trust Acres-into-Trust Spreadsheet for 2000-2006
6. DOI Inspector General Memorandum to DOI Secretary, dated November 28, 2005
7. Investigative Activity Report: Interview of Clay Gregory, dated January 31, 2006
8. Investigative Activity Report: Interview of [redacted], dated February 10, 2006
9. Investigative Activity Report: Interview of [redacted], dated February 7, 2006
10. Investigative Activity Report: Interview of [redacted], dated February 14, 2006
11. Investigative Activity Report: Interview of [redacted], dated February 3, 2006
12. Investigative Activity Report: Interview of [redacted], dated February 1, 2006
13. BIA Merit Promotion Announcement No.: PR-05-03
14. Investigative Activity Report: Interview of [redacted], dated February 27, 2006
15. Investigative Activity Report: Interview of [redacted] d February 2, 2005
16. Investigative Activity Report: Interview of [redacted] ted December 14, 2005
17. Investigative Activity Report: Interview of [redacted] ated December 13, 2005
18. SOL Review of MOU on behalf of BIA-MRO, dated December 8, 2004
19. SOL legal opinion response to Inquiry regarding BIA's Fee-to-Trust Consortium in Pacific Region and Midwest Region, dated July 7, 2006

Office of Inspector General
Office of Investigations
U.S. Department of the Interior

Investigative Activity Report

Case Title	Case Number
California Fee to Trust Consortium MOU	PI-PI-06-0091-I
	Related File(s)
Case Location Sacramento, California	Report Date January 24, 2006
Report Subject Amy Dutschke Interview	

DETAILS

On January 18, 2006, Special Agents [redacted] and [redacted] interviewed Amy Dutschke, Deputy Regional Director, Bureau of Indian Affairs (BIA), Pacific Region Office (PRO), in her Sacramento, California, office from 0800 to 1115 hours regarding the California Fee to Trust Consortium Memorandum of Understanding (MOU). Dutschke offered the following information:

In 2000, BIA-PRO had "over 300" fee-to-trust (FTT) applications backlogged. It was not a primary responsibility of any BIA-PRO employee to process these applications, but rather a low priority, collateral duty of those employees working within the real estate division. Indeed, it was considered a "big deal" when an application was processed and adjudicated. The California tribes were unhappy about this large backlog, therefore BIA-PRO met with the Californian tribes several times in an attempt to figure out a solution to this issue. As a result of these meetings, former BIA-PRO Regional Director Ron Jaeger and Dutschke "worked with the tribes" in creating the MOU.

No one person drafted the MOU, but rather it was drafted by a "conglomerate" of persons from the tribes and BIA-PRO. Tribal counsel participated in drafting the MOU, whereas the Department of the Interior's Office of the Solicitor (SOL) was not consulted in drafting the MOU, nor were they asked to review the final MOU draft. Dutschke does not believe the possibility of having SOL review the document "ever came up" during BIA-PRO's discussions about the MOU.

In 2004, BIA-PRO sent a copy of their MOU to the BIA Midwest Regional Office (BIA-MRO) for their considered use. BIA-MRO had the Field Solicitor review the MOU, which resulted in several modifications to the document. When asked why BIA-PRO did not request a copy of the modified MOU, in order to review the SOL's comments, Dutschke stated she was unaware that BIA-MRO requested such a review.

Under the MOU, tribes may elect to "re-direct" Tribal Priority Allocation (TPA) funds that are earmarked for the individual tribes to the FTT program. Each California tribe has the option of joining the FTT consortium; the minimum TPA donation is $3000 per year, whereas there is no maximum donation.

Reporting Official/Title	Signature
[redacted]	

Distribution: Original – Case File Copy - SAC/SIU Office Copy – HQ Other:

The re-directed TPA funds are used to hire BIA federal, full-time employees who are designated as "consortium staff." Their sole duties and responsibilities are to review and process tribal FTT applications that are submitted by FTT consortium member tribes (tribes which have re-directed TPA funds into the program). In addition to processing Notices of Application to the public, the consortium staff reviews the FTT applications' title status (Realty Specialists) and conducts environmental reviews of the involved properties (Environmental Specialists). Additionally, Realty Specialists review the applications for compliance with the criteria listed under Title 25 of the Code of Federal Regulations, section 151 (25 CFR 151), and make recommendations whether the applications satisfy these criteria. Finally, once the review process is completed, the consortium staff makes a recommendation to the adjudicating official whether they believe the application should be accepted into trust or not; according to Dutschke, "generally, these recommendations are favorable."

The consortium staff act as facilitators in reviewing the FTT applications; they work closely with the tribes by informing them if the application is insufficient in a specific area and making recommendations to the tribes as to what they need to do in order to receive a favorable recommendation. As a general rule, the tribe members confer with BIA about the application prior to submitting an application. A premium service is "definitely" being provided to consortium FTT applications; according to Dutschke, "it is expected," and the "whole purpose" is to ensure these applications receive a favorable recommendation. Dutschke would not refer to the consortium staff as "ministerial" or "paper pushers."

Once the applications receive a favorable recommendation, the consortium staff prepares the proposed Notice of Decision for signature by the respective adjudicating official. Generally, an area superintendent is the adjudicating official for "on-reservation" applications, the regional director is the adjudicating official for "contiguous" applications, and BIA Washington Central Office (WCO) is the adjudicating official for "off-reservation" and gaming applications. The BIA-PRO consortium staff processes off-reservation and gaming applications; however, these applications are ultimately forwarded to WCO for adjudication. Once adjudication is made, this decision may be appealed to the Interior Board of Indian Appeals.

BIA has a "re-occurring request" before Congress for "realty money." In 2000, BIA's congressional appropriations included $323,000 for the hiring of five Full Time Equivalent (FTE), GS-5 positions to assist with the backlog of FTT applications. This money was divided amongst all PRO tribes as individual "shares." Based upon the determined share amounts for each of the tribes participating in the FTT consortium, $175,000 was directed to the funding of the consortium staff. The total share amounts for all the tribes that are not members of the consortium ($98,000) was directed to the BIA-PRO's region-wide realty fund, to the benefit of all tribes in BIA-PRO (including consortium tribes). The remaining share amounts, totaling $50,000, were directed to the California Trust Reform Consortium for use by their member tribes.

The California Trust Reform Consortium was created "around 1998" and includes seven tribes. This consortium was created in order to organize resistance to the transfer of Indian property, money, and services from BIA to the Office of Special Trustee (OST). In this consortium, TPA funds are similarly used to hire four federal BIA employees; approval for this TPA staff funding is located in section 139 of the 2003 Appropriations Bill.

According to Dutschke, TPA funds are in fact "appropriated funds." Under the MOU, the TPA funds are used to hire staff to perform inherently governmental functions as a "direct service" to the tribes. Tribes have the discretion to use TPA funds in any way they choose; they may choose to have the funds retained by BIA in order to have BIA perform the services on their behalf (this is mandatory for inherently

governmental functions), or they may choose to request the funds under a PL 638 contract in order to perform the services themselves. If a tribe initially elects to direct their TPA funds to BIA in order to perform a non-inherently governmental function, and then later decides to request the funds under a PL 638 contract, the BIA employees who were hired to perform the services would then be released by BIA via a Reduction in Force (RIF). Dutschke acknowledged that if the consortium tribes stop re-directing TPA funds under the FTT MOU, BIA consortium staff employees would similarly be subject to a RIF.

Supervisory Realty Specialist [redacted] creates a budget determining how the TPA funds will be utilized under the program. This budget is then presented to the Consortium Oversight Committee (hereinafter "Committee") for their approval. This all-tribal Committee is comprised of representative tribal members from various consortium tribes. The Committee usually approves the budget; however, in recent years, the Committee has been loath to approve use of TPA funds for cash awards to consortium staff.

All current FTT applications are at "some point in the process" because the consortium staff is capable of handling each application as they are received by BIA. Prior to the MOU, when there was a large backlog of applications, the applications were handled in a "first-in-first-out" (FIFO) approach. This FIFO approach is still utilized by the one realty specialist who handles all non-consortium applications.

Non-consortium applications are processed by Realty Specialist [redacted] the "most experienced realty person" in BIA-PRO. In addition to processing non-consortium applications, [redacted] reviews all consortium applications once they are completed due to her expertise and knowledge. Using the same approach that was used for all FTT applications prior to the MOU; [redacted] processes the non-consortium applications as a collateral duty, when she has time to do so.

Consortium staff are full-time, federal employees hired under a competitive announcement. BIA initially intended to hire 12 positions under the MOU, whereas they currently have 10 positions designated under the MOU. Seven of these positions are filled, with three vacancies. The currently filled positions are identified at the following General Schedule (GS) levels:

Grade	# of employees
GS-13	1 (Supervisory Realty Specialist)
GS-12	2 (Environmental Specialist and Realty Specialist)
GS-11	1 (Realty Specialist)
GS-7/9/11	3 (one Environmental Specialist and two Realty Specialists)

Consortium staff receive mainly "on-the-job" training. Any formal training is funded by TPA funds.

As noted above, if tribes decide to stop re-directing TPA funds to the program, these federal employees would be subject to a RIF. Dutschke, however, pointed out that the "senior level" employees would not necessarily be out of a job because they would "bump" lower level employees within the Region, who, in turn, would bump other lower level employees, and so on. Accordingly, BIA would ultimately need to lay off several GS-5/7 federal employees in order to offset the loss of the TPA funding currently being used to fund the GS-13, GS-12, and GS-11 consortium staff positions.

Dutschke stated that, at the time of the MOU's inception in 2000, she and Former Director Ron Jaeger discussed the possibility of identifying these consortium positions as term positions (as opposed to FTE positions). However, it was decided by Jaeger that "he would run the risk" of not making the positions term in order to better attract highly qualified candidates. Dutschke and Jaeger both recognized that

experienced federal employees would not apply to these positions if they were announced as term positions.

Dutschke was asked if BIA-PRO notified the federal employees working as consortium staff, at the time they applied for the positions, that these jobs are funded solely by TPA monies. She stated that the announcements did not indicate that these positions were funded by TPA funds. She did acknowledge that these positions are more tenuous than other appropriated positions due to their reliance on TPA funding; however, she pointed out that, with respect to appropriated positions, "loss of appropriations happens all the time." She further acknowledged that "most or all" consortium staff, who were already federal employees prior to transferring to the consortium staff positions, did receive upgrades when they transferred to their current positions.

The all-tribal Committee is comprised of members of several different consortium tribes. They are not solely representative of the tribes contributing the most TPA funds, but rather represent tribes that have the strongest interest in the program. The Committee does not contain any federal employees; however, the purpose of the Committee is to meet with BIA and discuss relevant issue related to the program.

The Committee did review and provide input in the drafting of the initial Position Descriptions (PD's) for the consortium staff positions. The PDs were then classified by BIA's personnel office. BIA issues the announcements for vacant positions, receives applications, and produces a list of certified candidates. BIA officials select an employee from the certified list and then inform the Committee of the selection. The Committee reviews the selection and makes a favorable or unfavorable recommendation; however, the ultimate decision whether to select the applicant rests with BIA. Regarding potential conflicts if an applicant were to be from a consortium tribe, Dutschke stated the consortium staff does not include any California Indians.

Regarding the MOU's provision that "recommendations for incentive or star awards will be brought forward to the [Committee]," generally, the Committee has agreed with BIA's award proposals for consortium staff. The Committee did, however, once refuse to approve an award proposed by BIA for a consortium employee because the Committee did not want to have TPA funds used to pay the cash award. Since that time, the cash used to pay these awards has come from BIA administrative account funds.

Regarding employee performance, if the Committee has a problem with a consortium employee, they will contact Supervisory Realty Specialist [redacted] and discuss their concerns. Consortium staff are aware that the all-tribal Committee has input in their performance evaluations and potential awards. Dutschke acknowledges that there could be the perception that the tribe's input on these awards may influence an employee's judgment to favorably recommend a tribes' application. However, Dutschke claims the Committee does not perform employee evaluations or ultimately decide who receives an award, but rather are simply consulted on these matters and make recommendations. The Committee does not "sign off" on employee evaluations.

Dutschke was asked if she felt the MOU violates Executive Order 12731, Section 101(h), inasmuch as these consortium employees only perform work for one select group of tribes, to the exclusion of other tribes. According to Dutschke, consortium staff do not provide any more preferential treatment to certain tribes (i.e. consortium tribes), to the exclusion of other tribes, than the BIA agencies in Montana who perform services exclusively for one tribe. She explained that all five BIA agencies in Montana provide services exclusively to the respective tribe in their service area, to the exclusion of other tribes. According to Dutschke, the nature of how BIA is structured results in this necessity.

Dutschke does not believe the MOU results in an augmentation of funds because the BIA never received money from anyone. She did acknowledge that the authority cited in the MOU is "probably not the appropriate authority."

EXHIBIT "J"

Copy of a 26 August 2005 letter from the California Governor's legal Affairs Secretary Peter Siggins responding to claims made by the Santa Ynez Band of Mission Indians contained in fee to trust applications pending at that time and in which the Band asserted they were THE ONLY CHUMASH INDIAN TRIBE in California. That letter contains the correct historical perspective and addresses the claimed needs of the Santa Ynez Band to bring additional lands into federal Indian trust status in Santa Ynez.

OFFICE OF THE GOVERNOR

August 26, 2005

Mr. James J. Fletcher, Superintendent
United States Department of the Interior
Bureau of Indian Affairs
Southern California Agency
1451 Research Park Dr., Suite 100
Riverside, California 92507-2154

Re: Notice of Non-Gaming Land Acquisition (5.68 Acres) Santa Ynez Band of Mission Indians

Dear Mr. Fletcher:

This is in response to a notice received by the Governor's Office regarding the Santa Ynez Band of Mission Indian's ("Tribe") pending application to have the United States of America accept the conveyance of approximately 5.68 acres of property located in Santa Barbara County in trust for the Tribe ("Trust Acquisition"). Though the Governor's Office received this notice in late June, at our request, your office courteously extended the time for comment to August 26, 2005

From the materials submitted with the application, it is our understanding that the proposed Trust Acquisition consists of 13 parcels. All 13 parcels are contiguous to one another and two of the parcels appear to be contiguous to the Tribe's existing trust lands. From the notice of application it appears that ten of the parcels are vacant properties and that three of the parcels have vacant houses or buildings on them. The application asserts that while no immediate change of use is planned as a result of the proposed Trust Acquisition, there may be commercial or residential development on those parcels in the future. Seven of the parcels, Assessor's Nos. 143-253-002, 003, 004, 005, 006, 007 and 008 are currently zoned as commercial lots. The other six, Assessor's Nos. 143-254-001, 003, 143-252-001, 002, 143-242-001, and 002 are currently zoned as commercial highway

In compliance with 25 C.F.R. section 151.10(b), the Tribe lists, in section 4 of its application, six Tribal needs this acquisition would purportedly fulfill. These are to help the Tribe: (1) meet its needs to have jurisdictional control over its land base; (2) meet its long-range needs to establish its reservation land base by increasing the land base; (3) meet the Tribe's need to preserve its land base; (4) meet its needs to "land-bank" property for future generations; (5) meet its needs to expand its Tribal government; and (6) meet its need to preserve cultural resources and protect the land from environmental damage, trespass or jurisdictional conflict.

In its essence, the Tribe's need for this acquisition amounts to a desire to fulfill what it concedes is a "top philosophical priority" – "the re-acquisition of its aboriginal lands." (Application ("App."), p. 8.) Secondarily, this acquisition appears to fulfill a Tribal goal to acquire more commercially viable land now so that it may be "land-banked" for future Tribal economic or residential development. (App., p. 10.) This is attractive to the Tribe because such land, if placed in trust, would allow the Tribe to argue that State and local land use regulation did not apply. Moreover, it would invest that land with the commercial advantage of being free of property tax, and potentially State income and State and local sales tax liability for certain types of economic activities. Additionally, the Tribe suggests that a trust acquisition at this time is necessary in order to protect Tribal cultural resources. (App., p. 11.)

In support of its claim that the Trust Acquisition would constitute re-acquisition of the Tribe's aboriginal lands, the Tribe appears to assert an entitlement to any lands that were part of the "Chumash cultural group's" territory prior to the first European contact. (App., p. 7.) Generally, this would encompass seven thousand square miles of land extending from Malibu in the South to Paso Robles in the North, to Kern County in the East and the Northern Channel Islands to the West. (*Id.*) More specifically, the Tribe seems to contend that the Trust Acquisition is part of lands that were purportedly granted by the Mexican Governor Micheltorena to certain "tribal leaders" of the "Santa Ines Indians." (*Id.*)

Underpinning the assertion of its need for additional developable land is the Tribe's claim that only 50 of its existing 139 acres of trust land is developable and that "much" but not all of that land has already been developed. (App., pp. 10-11.)

The Tribe's asserted justification for acquisition as a means of preserving Tribal cultural resources is the suggestion that because cultural resources were discovered on another site nearby, there might be cultural resources on these lands and that this possibility justifies a trust acquisition at this time. This suggestion is, of course, speculative.

The Department of Interior policy for trust acquisitions provides that land may be taken in trust when the Secretary of the Interior determines that the "acquisition is necessary to facilitate tribal self-determination, economic development, or Indian housing." (25 C.F.R. §

151.3(a)(3).) In this case, there has been no showing that the United States' failure to accept the proposed Trust Acquisition will: (a) preclude the Tribe from developing any needed housing for its members; (b) prevent the Tribe from proceeding with an economic development; or (c) leave Tribal cultural resources at risk. Similarly, there has been no showing that this trust conveyance is essential to the Tribe's ability to exercise sovereign authority.

In contrast to the absence of any immediate impact to the Tribe of a denial of its instant trust application, this Trust Acquisition, if approved, would have a significant individual and cumulative adverse impact on the State and its political subdivisions within the meaning of 25 C.F.R. section 151.10, subdivisions (e) and (f) and should, therefore, be denied.

A. The Tribe Has Failed to Provide the Demonstration of Immediate Need or Necessity Required by 25 U.S.C. Section 465 and 25 C.F.R. Section 151.3(a)(3).

The Tribe notes in its application that it currently exercises sovereign control over 139 acres of land including 12.6 acres of recently acquired land that allowed the Tribe to consolidate the northern and southern portions of its territory into a single geographic unit. The Tribe also notes that its current membership is 157. Despite the fact that this equates to more than .885 acres of land for each man, woman and child, or approximately 3.5 acres for each family of 4, the Tribe asserts that it does not have enough land. Its principal contention is that only 50 acres of the 139 are developable and that "most" of those acres have been taken up by its recently expanded and highly successful casino and hotel commercial venture and existing residential development. Though it concedes that there is land that can be developed for "small scale residential enhancements" (App., p. 11), the Tribe suggests that it needs additional land for possible future residential use or possible future commercial activities.

A desire for additional land, however, does not render an acquisition of land "necessary" within the meaning of 25 C.F.R. section 151.3(a)(3). Nothing in the legislative history of 25 U.S.C. section 465 ("IRA" or "Section 465") suggests any Congressional intent for the Secretary of the Interior to take land into trust for a tribe in the absence of a demonstrable immediate need. To the contrary, that history establishes that Section 465 was enacted in response to the immediate need to provide land for homeless Indians for the purpose of creating subsistence homesteads, consolidating areas within a reservation, for grazing and other similar agricultural purposes. (See House Report No. 1804, 73rd Cong. 2d. sess. (May 28, 1934) at 6-7; 78 Cong. Rec. at 9,269, 11,123, 11,134, 11,726-30, 11,743.) Neither the term nor the concept of "land-banking" for future generations or future speculative needs appears anywhere in Section 465, the Department of Interior's regulations or the legislative history of either. (See, for example, 25 C.F.R. section 151.11(c) which requires the submission of a business plan detailing the economic benefit to a tribe of a proposed economic activity where, as here, some of the parcels at issue are not contiguous to the Tribe's existing "reservation" as that term is defined in those regulations.)

Similarly speculative is the Tribe's assertion that some of its cultural resources might be at risk if this Trust Acquisition were not approved. In this regard, the Tribe argues that "[a] significant archaeological/cultural resource was recently discovered on property adjacent" to the Tribe's trust lands and that because of the "proximity" of the Trust Acquisition to that discovery, there is a "potential" that such resources might exist on the Trust Acquisition as well. (App., p. 11.) The Tribe has had control of the Trust Acquisition for more than two years and the complete ability to conduct an archaeological survey. The fact that the Tribe has not uncovered any sites on the property in this period of time suggests strongly that no such sites exist. In any event, the mere possibility that such a site might exist is not a valid basis for a trust acquisition.

Further, while the Tribe seeks to justify the acquisition as a re-acquisition of the "Chumash cultural group's" aboriginal territory, it has not demonstrated either a political entitlement to that territory or, assuming such an entitlement were established, that an acquisition of this nature is essential either to its existence as a tribe or to its ability to function.

While there are numerous discrepancies on details, historical accounts of the Chumash[1] agree that prior to European contact the Chumash did not constitute a single political entity but rather were an amalgam of peoples speaking roughly six to eight different but related languages in contiguous linguistic territories. Within each linguistic territory there were villages typically of 15 to 50 dwellings that constituted separate and independent political entities each controlled by a chieftain (although some chieftains at various times may have controlled more than one village). Altogether it is estimated that there were about 150 such villages in all of these linguistic territories. The Tribe's trust lands are located in the territory of a single linguistic group that by some accounts could have contained up to 50 different politically independent villages. Thus, in the absence of a more detailed explanation from the Tribe, there does not appear to be any basis for a claim by the Tribe to all Chumash linguistic group aboriginal territory. Acceptance of such a claim by the United States could justify the acquisition in trust of seven thousand square miles of land now occupied by an overwhelmingly non-Native American population well beyond the needs of a 157 member tribe that already exercises sovereign authority over more land than it is currently utilizing.

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[1] See generally, California's Chumash Indians, Santa Barbara Museum of Natural History, EZ Nature Books 1996, Rev. Ed. 2002; The Chumash Indians After Secularization, Johnson, California Mission Studies Association, Nov. 1995; Anthropology and the Making of Chumash Tradition, Haley & Wilcoxon, Current Anthropology vol. 38, no. 5. Dec. 1997; Encyclopedia of North American Indians, Chumash, Houghton Mifflin.

The aboriginal political configuration of the Chumash linguistic territories, in which the Santa Ynez Valley was variously under the control of up to 50 independent tribal entities, was itself obliterated during the Mission era. Most sources appear to agree that very shortly after establishment of the Missions there were no politically independent villages in the Santa Ynez Valley, all Indians having been subsumed within the Spanish political system. Spain, the initial political successor to the aboriginal sovereigns after conquest, was succeeded in political authority by Mexico, neither of these sovereigns having recognized sovereignty in any aboriginal political entity. (See, Aboriginal Title: The Special Case of California, (1986) 17 Pac. Law Journal 391, 400.) Similarly, in the Treaty of Guadalupe Hidalgo, the United States recognized no sovereignty other than its own over the newly acquired land, and, upon admission of California into the Union, reserved no Indian lands from State jurisdiction as it had with other states. (See, California Admission Act of Sept. 9, 1850, 9 Stat. 452.)[3] Though the United States has subsequently compensated individual Indians for lost land in several acts (see, Aboriginal Title: The Special Case of California, supra, at pp 400-415), the purpose of those enactments was not to recognize sovereign title by any government or title by any individual Indians. Instead, their purpose was to foreclose possible claims of aboriginal title altogether. (Id. at 419.) For the Secretary of the Interior to determine to add additional land to the Tribe's existing trust lands merely for the purpose of allowing the Tribe to re-acquire aboriginal lands would thus be contrary to established Congressional policy.

When the Tribe eventually received recognition from the United States, it was recognized as a new political entity comprised of the remnants of the many different independent villages—not as the continuation of any pre-existing political entity. Under the Mission Indians Relief Act of 1891, the Tribe was recognized and its reservation established in order to provide land for homeless Indians and a means by which those Indians could survive economically. When

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IN FACT THE SANTA YNEZ WERE NOT ANY PART OF TRIBAL RECOGNITION THAT WAS CREATE BY THE MISSION INDIAN RELIEF AC

[3] Under the Land Claims Act of March 3, 1851, 9 Stat. 631, the United States determined, through a board of land commissioners, that the land in the Santa Ynez Valley had been granted to the Catholic Church and other private individuals. Additionally, in a report required by section 16 of the Land Claims Act, the board determined that Indians living in and around California Missions, though asserting grants to them by the Mexican Governor Micheltorena, could not provide sufficient documentation supporting any such claims. A subsequent suit by the Catholic Church in 1853 likewise did not validate any Indian claims to lands around the missions. Thus, subsequent to California's admission to the Union, the United States not only did not reserve any lands otherwise ceded to State sovereignty for the sovereign use of any tribe of Indians, but it also did not recognize non-sovereign title to any such lands by individuals Indians or groups of Indians.

Section 465 was subsequently enacted in 1934, it had a nearly identical purpose. That purpose was not to re-establish the aboriginal territory of any pre-existing tribe. Rather, it was to provide a secure place for Indians to live and to become financially independent.

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Simply put, in pre-contact times there was no Santa Ynez Band of Mission Indians or any single independent political entity constituting a collection of the many different villages in the Santa Ynez Valley. The Santa Ynez Band's, territory is the territory assigned to it by the federal government because of United States' policy to provide land for homeless Indians whose survival depended upon the provision of such land.

In summary, the Tribe has not demonstrated an entitlement to seek sovereignty over the aboriginal lands of Chumash villages in linguistic territories outside of the Santa Ynez Valley and has not demonstrated that it is the successor in interest to any of the independent political villages of the pre-contact Santa Ynez Valley. In any event, the objective of re-acquisition of aboriginal lands is not a valid basis for approval of a trust acquisition under the IRA. Certainly nothing in the IRA suggests that the establishment of tribal political control over land overwhelmingly populated by non-Indians is a valid basis for a trust acquisition. The United States Supreme Court recognized in *City of Sherrill, New York v. Oneida Indian Nation of New York* (2005) 125 S.Ct. 2290, 161 L.Ed.2d 1103, that the long passage of time and the creation of vested non-Indian political and private interests on former Indian territory argue strongly against any *legal* right to that territory. The ability to bring such territory under the sovereign control of the Tribe through the trust acquisition process exists only in the IRA. Where, as here, the Tribe has made no showing of an immediately cognizable need for the acquisition and has failed to show that the acquisition of purported aboriginal territory would not create intense adverse inter-jurisdictional conflicts as required by the IRA, its application should be denied.[3]

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[3] As the Supreme Court noted:

> Recognizing these practical concerns, Congress has provided a mechanism for the acquisition of lands for tribal communities that takes account of the interests of others with stakes in the area's governance and well being. Title 25 U.S.C. § 465 authorizes the Secretary of the Interior to acquire land in trust for Indians and provides that the land "shall be exempt from State and local taxation." See *Cass County v. Leech Lake Band of Chippewa Indians*, 524 U.S. 103, 114-115, 118 S.Ct. 1904, 141 L.Ed.2d 90 (1998). The regulations implementing § 465 are sensitive to the complex interjurisdictional concerns that arise when a tribe seeks to regain sovereign control over territory. Before approving an acquisition, the Secretary must consider, among other things, the tribe's need for additional land; "[t]he purposes for which the land will be used"; "the impact on the State and its political subdivisions resulting from the

B. Any Benefit to The Tribe From this Proposed Trust Acquisition is Far Outweighed by the Adverse Individual and Cumulative Adverse Effects Approval of this Trust Application Would Have on the State.

Approval of the Tribe's application absent a showing of immediate need or necessity could have potentially severe adverse cumulative impacts on California. There are 108 federally recognized tribes in the State. If this Tribe is permitted to acquire land in trust when it has no immediate need for that land, other tribes in the State may claim entitlement to the same treatment by the Department of the Interior pursuant to the provisions of 25 U.S.C section 476, subdivisions (f) and (g) which provide that no agency of the United States shall make a determination under the IRA that "classifies, enhances, or diminishes the privileges and immunities available to an Indian tribe relative to other federally recognized tribes by virtue of their status as Indian tribes" and that any decision that does discriminate in that fashion "shall have no force or effect." Allowing up to 108 federally recognized tribes in California to place into trust land for which they have an aboriginal claim could involve more than 75 million acres—the amount of land many tribes in this State have claimed would have been theirs had the United States ratified 19th century treaties granting that acreage. Congress rejected those treaties because of the impact that granting tribes that amount of land would have had on California in the 1850s. Whatever impact those treaties might have had on California in the 19th Century pales in comparison to the impact of contemporary removal of a comparable amount of land from the State's authority over land use and taxation—both of which are fundamental attributes of its sovereignty. Such a result would constitute federal interference with the powers reserved to the State in a manner patently at odds with the intent of the Tenth Amendment.

Further, the Tribe's claim that there would be no jurisdictional conflicts if this land were taken into trust is belied by the County of Santa Barbara's present inability to complete an agreement with the Tribe over land use restrictions on its pending 6.9-acre trust acquisition and the appeal of the Bureau's decision to approve that application by adversely affected residents in the surrounding community. It is also belied by the County's request (in its August 10, 2005, comment letter on the Trust Acquisition) that the Bureau refrain from approving this application pending execution of an agreement between the County and the Tribe over land use and other matters affecting the Trust Acquisition.

Additionally, as the County's comment letter demonstrates, and contrary to the Tribe's assertions, there are tremendous tax implications for local government should this property be taken into trust. The property is commercially zoned for the most part. In its application, the

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removal of the land from the tax rolls"; and "[j]urisdictional problems and potential conflicts of land use which may arise." 25 CFR § 151.10 (2004).

(*City of Sherrill, New York v. Oneida Indian Nation of New York*, 161 L.Ed.2d at p. 1494.)

Tribe calculates only the current assessed value of the property in calculating the tax loss to the County. However, the County's comment demonstrates that if the property were commercially developed, the potential loss to the County would be over forty million dollars. (See, County comment attached hereto as Exhibit A.) The comment also demonstrates that even if the property were not developed, the loss to the County over the next 50 years for land that could be immune from taxation in perpetuity would be more than 2.3 million dollars.

Similarly, there are significant implications for non-Tribal businesses located in the adjacent business district. Freed from the requirement to pay State and local property, sales and income taxes, Tribal businesses could plainly undercut non-Tribal businesses to an unfair commercial advantage. That this concern is real is demonstrated by the newspaper article attached hereto as Exhibit B. Simply put, there is no basis in the IRA for continuing to grant the Tribe the political, regulatory and economic advantages of trust status when the Tribe's political and economic survival is no longer an issue. The Tribe does not claim that its casino and hotel business, which is exempt from State and local taxation, is insufficient to allow the Tribe to function as a tribal government or to provide for the economic well-being of its 157 members. Indeed, the Tribe's income from those two businesses alone by all accounts is able to provide income distributions to Tribal members that substantially exceed the average individual income in Santa Barbara County. The IRA combined with the Indian Gaming Regulatory Act has accomplished its purpose with respect to this Tribe.

C. NEPA Requires that the Bureau not Make a Decision on a Trust Application Until it has Examined All Reasonably Foreseeable Individual and Cumulative Adverse Impacts an Approval Might Have on the Environment.

The Tribe's application indicates that it has no plans to perform an analysis of the potential individual and cumulative adverse impacts this acquisition might have on the environment. Instead, the Tribe claims that this project is entitled to a categorical exclusion. A transfer of regulatory authority from the State to an Indian tribe that may have the consequence of eliminating regulatory preclusion of a development that is reasonably foreseeable compels the preparation of an environmental impact statement. (*Anacostia Watershed Soc. v. Babbitt* (D.D.C., 1994) 871 F. Supp. 475, 482-483; *Conner v. Burford* (5th Cir. 1988) 848 F.2d 1441, 1450-1451; *Sierra Club v. Peterson* (D.C.Cir. 1983) 717 F.2d 1409, 1412-1415.) In this case, while the Tribe has no apparent immediate plans to develop the Trust Acquisition, it has indicated that it may develop the property in the future for commercial or residential purposes. Thus, such development, without full federal or State regulatory control, is a reasonable foreseeable consequence of the approval of this Trust Acquisition and the potential individual and cumulative adverse impacts of such development must be analyzed in an environmental

impact statement. Further, as noted by the County in its comment letter, the Bureau has an obligation to consider the impact of the various trust acquisitions the Tribe has pursued and is pursuing on a collective rather than a piecemeal basis. The Bureau should not consider the Tribe's current application in isolation but rather in the context of its apparent intention to pursue further acquisitions for the sake of the "re-acquisition of its aboriginal lands."

CONCLUSION

For the foregoing reasons, the Governor's Office opposes the Trust Acquisition at this time and requests that the Bureau deny the Tribe's proposed Trust Acquisition. This acquisition does not seem justified under the requirements of, or in accord with the intent underlying, the IRA. Thank you for the opportunity to comment on this application.

Sincerely,

PETER SIGGINS
Legal Affairs Secretary

Attachments

EXHIBIT "K"

Copy of letter sent to the U.S. House of Representatives, Natural Resources Committee sent from then County Chief Administrative Officer Chandra Wallar responding to the earlier testimony of tribal Chairman Armenta who claimed the County refused to negotiate and respond to a proposed "Cooperative Agreement" the band had submitted. CEO Wallar pointed out the absolute prerequisite for considering the band's proposal was the need that it be legally binding and enforceable by the County.

County of Santa Barbara, California Comments of Hearing:

Request for Inclusion in Official Record

United States House of Representatives Committee on Natural Resources Subcommittee of Indian and Alaska Native Affairs

August 2, 2012 Oversight Hearing on Indian Lands: Exploring Resolution to Disputes Concerning Indian Tribes, State and Local Governments, Private Land Owners over Land Use and Development

Submitted By: Chandra L. Wallar, County Executive Officer, Santa Barbara County

Chairman Young and Ranking Member Lujan, on behalf of the County of Santa Barbara, I want to thank you for the opportunity to submit written testimony for the Subcommittee's oversight hearing regarding [illegible]

The County of Santa Barbara Board of Supervisors has adopted a legislative policy which formally supports government-to-government relations and recognizes the role and unique interests of tribes, states, counties, and other local governments to protect all members of their communities and to provide governmental services and infrastructure beneficial to all. In addition, the County recognizes and respects the tribal right of self-governance, to provide for tribal members and to preserve traditional tribal culture and heritage. In similar fashion, the County recognizes and promotes its own self-governance to provide for the health, safety, and general welfare of all members of our communities. The County supports the full involvement of local jurisdictions and all community members on issues and activities which may generate public health, safety or the environmental impacts.

Involvement of the local government, general public and technical consultants in matters pertaining to future land use and potential development is critical to the overall review of any project. This broad involvement provides thoughtful compliance with Community Plans and the County's General Plan. Failure to fully engage a diverse group of stakeholders in project development, and review, impairs the ability of a local government to seek appropriate mitigation and/or provide critical public services in an orderly fashion which may have long term deleterious impacts on a region as a whole.

The County of Santa Barbara continuously works with the California State Association of Counties (CSAC) as well as the National Association of Counties (NACo) to collectively improve upon processes to develop and continue government-to-government relationships between federal, tribal, state, and local governments. It should be recognized that the County of Santa

Barbara's position on the need for stakeholder and local government involvement is by no means unique. Both CSAC and NACo adopted policies consistent with that of the County of Santa Barbara in public engagement and stakeholder involvement as well as the following areas:

- Projects that impact off reservation land require review and approvals by the local jurisdiction to construct improvements consistent with state law and local ordinances including the California Environmental Quality Act.

- Tribal government, mitigation of all off reservation impacts caused by projects for services including but not limited to traffic, law enforcement, fire, parks and recreation, roads, flood control, transit and other public infrastructure

- Projects will be subject to a local jurisdiction's health and safety laws and guidelines including but not limited to water, sewer, fire inspection, fire protection, ambulance service, food inspection, and law enforcement.

The County has continuously supported the CSAC and NACo policy positions stating that judicially enforceable agreements between counties and tribal governments be required to ensure that potential impacts resulting from projects are fully analyzed and mitigated to the satisfaction of the surrounding local governments in the long term. Such agreements ensure that tribal and local governments can fulfill their primary mandate; ensuring the health and safety of those we serve. Without such agreements, and the ability to fully mitigate local impacts of a tribal government's business and development activities, local government's ability to in fact ensure the health and safety of residents is severely compromised.

In addition it is important to note that, as a result of the severe economic issues facing the State of California, a critical mechanism providing local government with funding to mitigate the impacts of tribal development and business activities, the State Special Distribution Fund (SDF), has diminished by over 50%. This places both the health and safety of all in jeopardy. Santa Barbara County has lost over $760,000 used annually to sustain fire and law enforcements services as well as maintenance of transportation infrastructure to mitigate the impacts of tribal businesses including gaming. County policy is that private and public projects must mitigate the impacts of their development on public infrastructure and services. Mitigation is achieved through conditioning of the project to complete infrastructure improvements and/or payment of impact fees.

During the hearing, your committee respectfully posed multiple questions to the testifying witnesses to gain a thorough understanding of the Santa Barbara County land use process and the ability of the Santa Ynez Band of the Chumash Indians to access the land use process.

Additional questions were proffered on the nature and disposition of the cooperative agreement mentioned by the Tribe. I would like to provide you with the County's perspective on these key issue areas.

Land Use

Regarding the land use issues and the 6.9 acre parcel recently taken into trust by the Bureau of Indian Affairs (BIA) on behalf of the Tribe, the County of Santa Barbara did not appeal the BIA's decision. The County Board of Supervisors considered this item in open session on July 10, 2012, receiving testimony from 46 individuals both for and against an appeal, and voted not to appeal.

The 6.9 acres includes a 2.13 acre western portion of the property which is zoned for recreational uses. The remaining 6 parcels totaling 4.77 acres are zoned C-2/MU allowing commercial and commercial/residential mixed uses under the local Santa Ynez Community Plan. Therefore, a museum/cultural center and retail commercial uses are allowed in the C-2/MU zone district with approval of a Development Plan by the local Planning Commission. The steps in the process for all County residents begin with submittal of a complete application. After staff review of project scope and determination of environmental impacts and consistency with Community and County General Plan the project moves to the County Planning Commission for a public hearing and decision on approval of the project, including appropriate conditions for mitigating impacts. The Planning Commission's action can be appealed to the Board of Supervisors within 10 days of their action. If appealed, a public hearing would be scheduled at the Board of Supervisors. The County of Santa Barbara Planning Development has not received a project application for a project in question on the 6.9 acres owned by the Santa Ynez Band of the Chumash Indians.

The 1,400 acres that the Tribe desires to take into trust and referenced during the Subcommittee hearing is currently zoned AG-II-100 (Agriculture, with a minimum parcel size of 100 acres). This land is also in a multi-year Agricultural Preserve contract which limits the uses on the property to agricultural uses. Agricultural preserve contracts require the application and renewal of the property owner over a ten or twenty year period in exchange for reduced property taxes.

Under current zoning, the property can be developed with agricultural uses, including grazing and cultivated agriculture, without any planning permits. There are a number of conditionally permitted uses on agriculturally zoned land, including country clubs, golf courses, and schools. A permit for these land uses would be processed as described above for Development Plans.

In order to change the land use from agriculture to another use, such as the development of housing on the 500 acres, referenced in the Subcommittee hearing, the owner of the property

would request that the County initiate a General Plan Amendment. The Planning Commission would consider an application and determine whether or not it should be processed. The Commission would consider factors such as public benefit of the proposed use, consistency with County Plans and policies, and compliance with the site's agricultural preserve contract. The Commission's recommendation is forwarded to the Board of Supervisors for the final decision. It is important to note that, as of this date, the County has not received a project submission for the 1,400 acres in question.

This process allows local government to review potential impacts of a development which may need to be thoroughly analyzed and mitigated. The impacts may include sheriff and fire services, traffic and circulation as well as the continued viability of agriculture on a given property or surrounding properties. Ensuring that impacts are addressed in a manner which preserves the health and safety of any community, as well as the present and future quality of life, is at the foundation of local government.

The Cooperative Agreement

The County Executive Office received a draft cooperative agreement from the Santa Ynez Band of the Chumash Indians on June 1, 2011. For your reference, the draft agreement is attached to this correspondence. During the Subcommittee hearing, it was stated that this agreement was delivered to the County "over 370 days ago with no response." Given the parameters of the federal fee to trust process, it is premature to initiate an agreement prior to submittal of a formal application from the Santa Ynez Band of the Chumash Indians. This was stated to the tribal representative following receipt of the agreement. Furthermore, it is my belief, this proposal is lacking specific details on development plans for the 1,400 acres and the resulting impacts upon which both parties could thoughtfully consider or discuss appropriate mitigation.

As noted above, the County of Santa Barbara supports government-to-government relations and recognizes the role and unique interests of tribes, states, counties, and other local governments to protect all members of their communities and to provide governmental services and infrastructure beneficial to all. In addition, the County recognizes and respects the tribal right of self-governance to provide for tribal members and to preserve traditional tribal culture and heritage. In similar fashion, the County recognizes and promotes self-governance by counties to provide for the health, safety, and general welfare of all members of our communities. As a local government we welcome the opportunity to work collaboratively with the Tribe and engage those potentially impacted by future development in order to facilitate sound land use decisions that benefit all. Any process that does not provide for involvement of all stakeholders, including that of the representative local government does not provide sound long term land use decisions nor transparency in government decision-making.

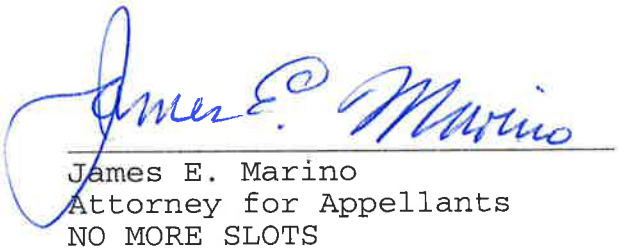
Thank you again for the opportunity to submit written testimony for the Subcommittee's oversight hearing regarding [illegible]

Attachments

- Draft Cooperative Agreement
- County of Santa Barbara adopted Legislative Platform

CERTIFICATE OF SERVICE

I certify that on the 31st day of December 2015, I delivered a true copy of the foregoing *Opening Brief of Appellant No More Slots* to each of the persons named on the attached list, either by depositing an appropriately-addressed copy in the United States mail, by email, or both.



James E. Marino
Attorney for Appellants
NO MORE SLOTS

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Appellants' Opening Brief

By e-mails only

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Appellants Opening Brief

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