

**THE LOS COYOTES BAND OF CAHUILLA & CUPEÑO INDIANS
OF THE LOS COYOTES RESERVATION, CALIFORNIA**

**CONSOLIDATION AND REORGANIZATION OF INFORMATION
IN THE EXISTING RECORD**

**Amended Fee-to-Trust Application
for ±23.1 acres in Barstow, California**

August 16, 2012

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INTRODUCTION

The Los Coyotes Band of Cahuilla & Cupeño Indians of the Los Coyotes Reservation ("Tribe", "Los Coyotes Band" or "Los Coyotes") hereby submits this amended and consolidated fee-to-trust application pursuant to Section 5 of the Indian Reorganization Act (IRA) and 25 C.F.R. Part 151, for a ± 23.1-acre parcel in the City of Barstow, California ("Barstow parcel"). The Tribe also is submitting an amended and consolidated request for a two-part determination for the Barstow parcel, which accompanies this application. This amended submission incorporates information from the Tribe's fee-to-trust application and request for a two-part determination originally submitted to the Bureau of Indian Affairs' (BIA) Pacific Regional Office on March 27, 2006, and the Tribe's subsequent resubmission on May 19, 2008, as well as the Tribe's amended fee-

to-trust and two-part determination request submitted June 20, 2012, which provided reorganized and additional information relating to the Tribe's fee-to-trust and two-part determination requests.

The Tribe submits this amended fee-to-trust application at BIA's request, to consolidate the Tribe's fee-to-trust application in one document and make the application easier to review and process.

HISTORY OF THE LOS COYOTES FEE-TO-TRUST APPLICATION AND TWO-PART DETERMINATION REQUEST

On March 27, 2006 the Tribe submitted a fee-to-trust application under 25 C.F.R. Part 151 and two-part determination request for a ±23.1-acre parcel located in the City of Barstow, California. At the same time, a second tribe, the Big Lagoon Rancheria ("Big Lagoon") submitted a fee-to-trust and two-part determination request for the adjacent 25-acre parcel, as Los Coyotes and Big Lagoon were planning to engage in a joint gaming development project. On April 19, 2006, the Bureau published in the Federal Register a Notice of Intent to prepare an Environmental Impact Statement ("EIS") under the National Environmental Policy Act ("NEPA") relating to the Los Coyotes and Big Lagoon proposal. On May 4, 2006, BIA held a public NEPA scoping hearing for the project at Barstow Community College. BIA then completed the scoping report and commenced preparation of the Draft EIS/Tribal Environmental Impact Report ("TEIR")¹ for the Los Coyotes and Big Lagoon project.

In June 2007 BIA Pacific Region sent the administrative Draft EIS/TEIR to the cooperating agencies and to the Office of Indian Gaming Management and the Office of the Solicitor at main Interior for review. While the Draft EIS/TEIR was under review at main Interior, on January 3, 2008, the Department issued new "Guidance on taking off-reservation land into trust for gaming purposes," pursuant to which the Department imposed a new "commutable distance" criterion for off-reservation gaming acquisitions ("Commutability Guidance"). On January 4, 2008, the day after the Commutability Guidance was issued, without any consultation, notice, or opportunity to demonstrate compliance with the Guidance requirements, Interior denied Los Coyotes' March 27, 2006 fee-to-trust application, along with those of eleven other tribes, including Big Lagoon.

The Commutability Guidance invited tribes to resubmit their fee-to-trust applications (and two-part determination requests) if they wished to address the new commutability requirement, and Department officials reiterated that invitation to Los Coyotes on several occasions.² As a consequence, on May 19, 2008 the Tribe resubmitted its fee-to-trust application and request for a two-part determination for the Barstow parcel to address the new commutability standard set out in

¹ Based on the requirements of California tribal-state gaming compacts, including the Los Coyotes' earlier compact, the Tribe expects that it will be required to prepare a Tribal Environmental Impact Report ("TEIR") under the terms of any compact that it eventually negotiates with the State. For that reason, the EIS and the TEIR have been prepared in coordination as an EIS/TEIR. BIA is the lead agency for the EIS; the Tribe is the lead agency for compliance with TEIR requirements.

² In a January 2008 meeting, then-Assistant Secretary for Indian Affairs Carl Artman personally assured Los Coyotes' then-Spokesperson Francine Kupsch that the Department would accept a resubmission by the Tribe and that it would resume its work on the Tribe's EIS. Later, at a February 2008 Congressional oversight hearing on the Commutability Guidance, Assistant Secretary Artman again invited tribes that had received denial letters to resubmit their applications to address the presumptions contained in the Guidance.

the Commutability Guidance.³ The Tribe's resubmittal clarified that the joint gaming project with Big Lagoon contemplated in the Tribe's March 27, 2006 application was no longer being considered, and that the resubmittal now concerned a single Los Coyotes-only gaming facility (and related development) in Barstow.

On the same day that the Tribe resubmitted its fee-to-trust application and two-part determination request, BIA issued a notice of termination of the EIS process for the Tribe's Barstow project. 73 Fed. Reg. 28841 (May 19, 2008). The termination notice did not become effective until June 20, 2008, so the Tribe requested, in light of its resubmitted application, that the Department resume the NEPA process for the Tribe's fee-to-trust and two-part determination request. On June 6, 2008, the Department issued a notice announcing that it would resume the NEPA process and continue its work on the EIS/TEIR for the Los Coyotes gaming development project in Barstow. 73 Fed. Reg. 32354 (May 19, 2008); *see also* 74 Fed. Reg. 13453 (March 27, 2009); 74 Fed. Reg. 16418 (April 10, 2009) (notices of correction). As explained in the notices and a subsequent letter requesting additional information from the Tribe, *see* Letter from Acting Regional Director Dale Risling to Francine Kupsch, Spokesperson, Los Coyotes Band of Cahuilla and Cupeno Indians (Aug. 26, 2008) (attached at **Tab A**), because the scope of the Los Coyotes trust acquisition and proposed gaming development remained unchanged and the Tribe had specifically addressed the Commutability Guidance factors in its resubmitted May 2008 application, BIA would resume its NEPA work without the need for further scoping, and would proceed with consideration of the Tribe's fee-to-trust and two-part determination application. Thereafter, the Department continued its work on the EIS/TEIR, and finally released the Los Coyotes Fee-to-Trust and Casino-Hotel Project Draft EIS/TEIR on July 1, 2011. 76 Fed. Reg. 38677 (July 1, 2011) (hereinafter "Draft EIS"). The Preliminary Final EIS is currently under review at main Interior.

The Commutability Guidance was criticized by Indian law scholars for imposing new restrictions not supported by the plain language of IGRA and its implementing regulations, and for having been promulgated without any consultation whatsoever with affected tribes or the public. It also was criticized for completely mischaracterizing the fundamental purpose of IGRA. *See* Testimony of Kevin Washburn before the House Natural Resources Committee, Hearing on The Department of the Interior's New Guidance on Off-Reservation Acquisition of Land in Trust for Indian Gaming, 110th Cong. at 3 (Feb. 27, 2008) (Washburn Testimony). ("In presuming that increasing reservation jobs is one of the most important aspects of Indian gaming, the Guidance Memorandum departs from the Indian Gaming Regulatory Act. IGRA describes the benefits of Indian gaming as tribal governmental revenues, not jobs. Indeed, nowhere in IGRA are jobs specifically mentioned, but IGRA specifically refers to 'tribal revenues' or 'tribal governmental revenues' repeatedly throughout the Act.") To its credit, in 2011 the Department rescinded the 2008 Commutability Guidance. *See* Department of Interior News Release, Assistant Secretary Echo Hawk Charts Balanced Course for Off-Reservation Gaming Policy; Guidance Rescinded (June 14, 2011).

On June 20, 2012, the Tribe submitted an amended fee-to-trust application and request for two-part determination, to reorganize the information in the existing record to track the organization of, and to provide additional information responsive to the requirements of, the Part 292 regulations, as well as to provide updated fee-to-trust information requested by BIA. In

³ Although the Tribe's resubmittal addressed the criteria in the Commutability Guidance, the Tribe preserved its objections to the Guidance as being illegal, and in fact, the Guidance subsequently was withdrawn by the current Secretary. *See* Guidance for Processing Applications to Acquire Land in Trust for Gaming Purposes (Aug. 24, 2011).

particular, the Tribe submitted its business plan as required by 25 C.F.R. § 151.11(c), updated title information, updated property tax statements, and additional maps to update and supplement its fee-to-trust application; the Tribe also re-submitted an updated, duly adopted Tribal resolution authorizing the fee-to-trust request and proposed development that it had previously submitted to BIA in 2009 (attached here at **Tab B**). In response, BIA asked that the Tribe consolidate its prior submissions into one fee-to-trust application (and one two-part determination request). This submission is the Tribe's amended and consolidated fee-to-trust application.

This consolidated fee-to-trust application provides complete and updated information specifically responsive to the requirements of BIA's fee-to-trust regulations at 25 C.F.R. Part 151 organized according to the individual subparts of those regulations (**Part I** below). It also provides a general overview of the Los Coyotes Band, its history, and its current reservation land base (**Part II** below). Because the 2008 Commutability Guidance has been withdrawn, information submitted in response to that Guidance is limited to only that information that is relevant to other aspects of the Part 151 regulations.

It has been a very, very long road for Los Coyotes since the Tribe first met with the City of Barstow a full decade ago (in 2002). In the more than six years since the Tribe first filed its fee-to-trust application in 2006, the Department's policy, guidance, and regulatory requirements have changed several times over.⁴ During that time period the Tribe also had to work with three different Governors, each with a different set of views and policies that the Tribe needed to address. During this long process, there have been only three constants:

- The Tribe is still one of the poorest tribes in the United States;
- The Tribe's application has met all applicable standards throughout all administrations; and
- The City of Barstow's strong support for the Tribe's project has been unwavering.⁵

The Tribe hopes that this amended fee-to-trust application, which tracks the structure and requirements of the Part 151 regulations, incorporates all relevant information from the Tribe's prior submissions, and provides all information necessary for BIA's fee-to-trust decision, will assist BIA in

⁴ For example, the Department issued a new Checklist for Gaming Acquisitions (2007), issued the Commutability Guidance (2008), promulgated new regulations implementing IGRA Section 20 (2008), issued a Secretarial memorandum regarding decisions on Indian gaming applications (2010); conducted lengthy tribal consultation regarding the process for making two-part determinations (2010), circulated a draft Fee-to-Trust Handbook (2011), issued new Guidance for Processing Applications to Acquire Land in Trust for Gaming Purposes (2011) (which withdrew the Commutability Guidance), and issued a decision effectively overruling its earlier position that it would not approve site-specific compacts unless the land at issue was held in trust) (2011).

⁵ The City's support is documented most clearly in the Los Coyotes/Barstow Municipal Services Agreement ("MSA"), which the parties originally entered in 2004. That document expresses the City's support for the Tribe's fee-to-trust application (pending environmental review), and specifically states that the "terms and conditions of this [Municipal Services] Agreement are designed and intended to evidence the goodwill and cooperation of the Tribe and the City in fostering a mutually respectful government-to-government relationship that will serve their mutual interests." After Los Coyotes submitted its fee-to-trust application, in August 2006 the Tribe entered into an amended MSA with the City, again evidencing the City's support for the project. *See* MSA and Amended MSA, both attached at **Tab C**. The City most recently expressed its support for the project in June 2012, when the City Council passed a resolution again stating its strong support for the Los Coyotes project. *See* City Council of the City of Barstow Resolution No. 4669-2012, Tab K to August 2012 Amended Two-Part Determination Request.

expediting its review of the Tribe's fee-to-trust application and will allow the Department to make a final, positive decision on the Tribe's request without further delay.

PART I INFORMATION REQUIRED BY 25 C.F.R. PART 151

§ 151.1 Purpose and Scope of Regulation.

This section describes the purpose and scope of the regulations and requires no response.

§ 151.2 Definitions.

This section provides definitions relevant to the regulations and requires no response.

§ 151.3(a) Limitations on the Land Acquisition Policy for Tribes.

Under this section, either the Los Coyotes Band must own an interest in the land (section 151.3(a)(2)), or "the acquisition of the land must be necessary to facilitate tribal self-determination, economic development, or Indian housing" (section 151.3(a)(3)). The Tribe's request satisfies both criteria:

§ 151.3(a)(2) The Tribe's Interest In the Land.

Currently, the property is owned in fee by an affiliate of the Tribe's development partner, LCB Barwest, LLC (Barwest). Barwest has unequivocally committed to transfer title to the property directly to the Secretary of the Interior for placement in trust for the Tribe upon: (i) the Secretary agreeing to accept the parcel in trust for the Tribe; (ii) the Secretary making a two-part determination that class III gaming may occur on the parcel pursuant to 25 U.S.C. § 2719(b)(1)(A); and (iii) concurrence of the Governor in the Secretary's determination pursuant to 25 U.S.C. § 2719(b)(1)(A).

§ 151.3(a)(3) Facilitation of Tribal Self-Determination, Economic Development or Indian Housing.

The acquisition of this parcel will facilitate tribal self-determination and economic development, as well as Indian housing.

A fundamental precept of tribal self-determination is the ability to provide governmental, health, and human services to tribal members. Provision of these services requires governmental revenue.

Steep terrain, environmental sensitivity, and the fact that the mountainous lands of the reservation essentially are landlocked, bounded to the north by the Anza-Borrego Desert State Park and Cleveland National Forrest, to the west by Cleveland National Forrest, to the east by Anza-Borrego Desert State Park, and to the south by public domain land (see map at p. 22), makes on-reservation commercial development a near-impossibility. The Tribe has no realistic environmental or economic alternative

but to obtain off-reservation land on which it can develop a gaming facility consistent with those operated by other tribes in the State of California. Without economic development, Los Coyotes has no means of generating significant tribal revenue, making its ability to provide governmental services nearly non-existent and leaving its ability to engage in meaningful self-determination severely compromised. Acquisition of the Barstow property for gaming purposes will provide the Tribe with an economically and environmentally viable location from which it can generate the revenue needed to engage in real self-determination.

Toward that end, the Tribe has worked very carefully to identify an interested and supportive municipal partner. The Tribe has located such a partner in the City of Barstow. By developing a Class III gaming establishment with related hotel and entertainment facilities in Barstow, the Los Coyotes Band will be able to bring economic security to its members (while contemporaneously bringing to the City sorely-needed economic development to spur local growth). Receipts from the Tribe's gaming facility will be used to fully fund and staff the Tribal government, providing employment opportunities and allowing the Tribal government to provide essential governmental programs and health services on the reservation, as well as to fund housing there. Gaming revenues also will be used to diversify and strengthen the Tribal economy, which will provide additional employment and economic development opportunities for the Tribe and its members. As described in BIA's Draft EIS, the acquisition of the Barstow parcel and the proposed development project "would assist the Tribe in meeting the following objectives":

- Improve the socioeconomic status of the Tribe by providing a reliable, significant revenue source that would be used to: strengthen the Tribal government; fund a variety of social, housing, governmental, administrative, educational, health and welfare services to improve the quality of life of Tribal members; and provide capital for other economic development and investment opportunities.
- Provide employment opportunities for the Tribal and non-tribal community, including the creation of on-reservation job opportunities.
- Establish economic self-sufficiency and achieve Tribal self-determination.

Draft EIS, Section 1.2.

As described in further detail in Part II of this application, the Tribe's inability to use its own reservation land in order to sustain itself has been a pressing problem for the Tribe for more than a century. As a result, the majority of tribal members have had no choice but to leave the reservation and disperse over a wide area of southern California to find employment and housing. *See* Tribal Population Map and Tribal Population Chart, both attached at **Tab D**. The Tribe currently has a total

enrollment of 340 members, but only 84, or about 25%, of its members live on the reservation. In addition, of all adult Tribal members living off the reservation in California, nearly half actually live within a "commutable distance" (i.e., within a 70-mile radius) to Barstow. *Id.*

In short, the acquisition of off-reservation trust land is absolutely necessary to give the Los Coyotes Band any real hope of true self-determination, meaningful economic development, and providing reasonable housing to its members. The Tribe's land in Barstow is best suited to meet those goals. Further discussion of the Tribe's unmet needs and intended uses of the revenue generated by the proposed trust acquisition and gaming development to facilitate Tribal self-determination, economic development, and tribal housing (among other tribal programs) are discussed in the Los Coyotes Unmet Needs Report, Tab A to the Tribe's Business Plan, attached at **Tab E**, and below in section 151.11(c).

The Tribe also finds Barstow to be an attractive location because it is not located near any other tribes (discussed further below in Subsection 151.11(a)), and because it is located in an area with which the Tribe is historically familiar. For all these reasons, the Tribe's application meets the requirements of section 151.3(a)(3).

§ 151.3(b) Limitations on the Land Acquisition Policy for Individual Indians.

This section does not apply because an individual Indian is not making the request for trust status.

§ 151.4 Acquisition of trust lands owned in fee by an Indian (individual or Tribe).

This section provides that unrestricted land owned in fee may be conveyed into trust under the regulations; it requires no response.

§ 151.5 Trust Acquisitions in Oklahoma.

Because the parcel in question is located in California, this section is not applicable.

§ 151.6 Exchanges.

Because the parcel in question is not being acquired by exchange, this section is not applicable.

§ 151.7 Acquisition of Fractional Interests.

Because a fractional land interest is not being acquired for the parcel in question, this section is not applicable.

§ 151.8 Tribal Consent for Nonmember Acquisitions.

Because the Tribe is not acquiring land on the reservation of another tribe, this section is not applicable.

§ 151.9 Requests for Approval of Acquisitions.

This section refers to the written request for approval of the acquisition of land in trust. This entire package is responsive to this section.

§ 151.10 On-reservation Acquisitions.

This parcel of land is not an on-reservation acquisition because it is not located within, nor contiguous to, the Tribe's reservation. Accordingly, this section 151.10 is applicable only through certain provisions in section 151.11, which are addressed below.

§ 151.11 Off-reservation Acquisitions.

Because this parcel of land is not adjacent to the Los Coyotes Band's current reservation, this parcel would be considered an off-reservation acquisition. Each of the pertinent off-reservation subsections is discussed below.

§ 151.11(a) Fulfill criteria listed in 25 C.F.R. §§ 151.10(a)-(c), (e)-(h):

- § 151.10(a) Statutory authority.

The Secretary of Interior is authorized to acquire trust title for the benefit of the Tribe pursuant to the general acquisition authority provided in Section 5 of the Indian Reorganization Act, 25 U.S.C. § 465. The Los Coyotes Band is included on the federal government's list of tribes which voted to accept or reject the IRA in 1934, *see* Ten Years of Tribal Government Under IRA, Theodore Haas, U.S. Indian Service (1947), and clearly was under federal jurisdiction at the time of the IRA's passage in 1934 within the meaning of *Carciari v. Salazar*, 555 U.S. 379 (2009). The Los Coyotes Band is relying on the general IRA Section 5 authority in requesting that this parcel be placed into trust.

- § 151.10(b) Need for additional land.

The Tribe's need for off-reservation land is acute. Although the Los Coyotes Reservation may seem large based on acreage alone (about 25,000 acres), the size is deceiving because the land situated within the Tribe's reservation is almost literally undevelopable for commercial purposes. The terrain of the land located within the reservation boundaries is excessively rocky and steep, which accounts in some measure for the fact that the reservation is severely underserved by the infrastructure necessary to support economic development. Electricity was not brought to the reservation until 1999 (many sectors of the reservation still are not wired) and three homes remain without electricity. Likewise, wastewater disposal infrastructure is nearly nonexistent and the roads are very limited and in poor condition. As a result, living conditions on the reservation are deeply substandard, with no hope of meaningful economic development there to counteract the situation. The 2000 census reported that only two homes on the Reservation use electricity for heating, that 68.2% of all homes use wood as their heating source, that 18% of homes have no plumbing or kitchen facilities, and that 22.7% of homes have no phone service. *See* U.S. Bureau of Census, Census 2000, Table DP-4 (Profile of Selected Social

Characteristics: 2000). Although some improvements have been made to these figures (only three homes still are without electricity), sixteen of the 23 homes on the reservation are mobile or modular homes (there are seven single-family homes and sixteen mobile/modular homes total, to serve a tribal membership population of 84) and most of the homes are very small and in need of repair. As summarized in the Draft EIS:

Economic development opportunities for the Tribe have been limited due to a lack of funds for project development and operation, as well as the fact that the Tribe's existing reservation lands are remote, composed almost entirely of steep, rugged terrain, environmentally sensitive, and difficult to access, being surrounded by various state and federal forest, park and public domain lands. As a consequence the reservation has limited infrastructure and the Tribe has no sustained revenue stream that could be used to fund programs and provide assistance to Tribal members.

Draft EIS, Section 1.2.

These conditions have a real, palpable effect on tribal members. Of the Reservation population 25 years and over, 53.6% never finished high school, while only two residents had Associate degrees and no residents had Bachelor's or graduate degrees. U.S. Bureau of Census, Census 2000 at Table DP-2 (Profile of Selected Social Characteristics: 2000). Based on 1999 income, 35.7% of all families on the Los Coyotes Reservation live below the poverty level, and 48.6% of all individuals residing on the Reservation in 1999 live below the poverty level.⁶ *Id.* at Table DP-3 (Profile of Selected Social Characteristics: 2000). In 1999, 53.8% of the households on the Reservation earned less than \$15,000 annually. *Id.*

In addition to the considerable limitations to on-reservation development discussed above, the Tribe's need for additional off-reservation land for economic development is further exacerbated by the fact that twenty tribes within sixty-five miles of the reservation currently operate casinos, all significantly more accessible to the urban areas of San Diego, Temecula and Palm Springs. *See* Chart of Tribal Casinos within Commutable Distance of Los Coyotes, and Map of Tribal Casinos, both attached at Tab F. These twenty tribal casinos include some of the most

⁶ The United States Census Bureau defines "poverty" based on "a set of money income thresholds that vary by family size and composition to determine who is in poverty. If a family's total income is less than the family's threshold, then that family and every individual in it is considered in poverty. The official poverty thresholds do not vary geographically, but they are updated for inflation using Consumer Price Index (CPI-U). The official poverty definition uses money income before taxes and does not include capital gains or noncash benefits (such as public housing, Medicaid, and food stamps)." *See* <http://www.census.gov/hhes/www/poverty/definitions.html>.

For example, in 1999 a household of one person under 65 years of age would be considered to be in poverty if her annual income was less than \$8,667. A family of two people (single parent under 65 and child) would be considered to be in poverty if the family's annual income was less than \$11,483. A family of four (parents under 65 and two children) would be considered to be in poverty if the family's annual income was less than \$16,895. Additional poverty thresholds for various family sizes can be found at <http://www.census.gov/hhes/www/poverty/threshld/thresh99.html>.

profitable such casinos in the United States, including facilities owned by the Agua Caliente Band of Cahuilla Indians, the Morongo Band of Cahuilla Mission Indians, the Pechanga Band of Luiseno Mission Indians and the Sycuan Band of Diegueno Mission Indians. As of March 2006, of the 58,120 Class III gaming devices operated within the State of California, more than half (approximately 30,000) of those devices were being operated within sixty-five miles of the Los Coyotes Band's reservation. Since 2004, three tribes within forty miles of the Tribe's reservation obtained compacts authorizing an unlimited number of Class III gaming devices. And just a few months before the Department denied the Los Coyotes Band's fee-to-trust application, the Department approved (by its inaction) five tribal-state compacts which authorized five neighboring tribes to expand the number of Class III gaming devices from 2,000 to either 5,000 or 7,500; an increase of 22,500 Class III gaming devices in the Los Coyotes Band's local potential market area. The Department's effective approval of these compacts for tribes with existing (and already very lucrative) gaming operations located between urban centers and the remote Los Coyotes reservation further diminished any ability of the Los Coyotes Band to participate in the local gaming market. Given this absence of lands on or near reservation that could be successfully used for gaming, it is clear that the Tribe needs an additional, off-reservation parcel that is some distance from the reservation, *i.e.*, the Barstow parcel, if it wants to succeed in its efforts to engage in meaningful economic development and tribal self-determination.⁷

This is borne out by the analysis of the on-reservation alternatives in the Draft EIS, one of them a gaming facility, which shows the very limited potential for meaningful economic development on the Los Coyotes reservation. The Draft EIS projects that operation of the Los Coyotes proposed project in Barstow would create 1,085 jobs and \$126.4 million in annual revenue. Compare this to the on-reservation development alternatives, where potential revenues are projected to be at most \$9.3 million, with only about 108 jobs created by operation of the on-reservation gaming alternative, projections which the Tribe believes are extremely optimistic given the nature of the gaming market in the area and the Tribe's past experience in attempting to engage in economic development on the reservation. (It also is important to note, although the Draft EIS does not discuss it, that it will be very difficult for the Tribe to find financing for an on-reservation facility given the meagerness of the projected market there and the inability of the projected revenue to pay the debts necessary to construct the infrastructure and gaming facility.)

The Tribe's need for additional off-reservation land for economic development is further illustrated by the fate of the Los Coyotes' neighbor tribe, Santa Ysabel, which opened a small casino on its reservation in April 2007 nine miles from the Los Coyotes reservation. By 2008, Santa Ysabel was unable to generate enough revenue to make its impact payments to the County, even though it has a more favorable location than the Los Coyotes reservation. *See* Santa Ysabel Casino Behind on Payments, North County Times staff writer (March 4, 2008), attached at **Tab G** (describing Santa Ysabel Tribe's failure to generate revenue from its small, on-

⁷ A related important point is that even if Los Coyotes could find some way to break into the established gaming market closer to its reservation (which may be at or near saturation), it would have to do so at the expense of these other existing tribal gaming operations. As a result, any attempt to find nearby off-reservation lands for gaming necessarily puts the Tribe in a position of having to move into one of its sister tribe's gaming markets.

reservation casino which is nine miles from Los Coyotes). The Tribe was unable to generate enough revenue even to finish building its resort and hotel, and earlier this year filed for Chapter 11 bankruptcy protection. *See* Indian Casino Seeks Bankruptcy Harbor, Katy Stech, Wall Street Journal (Aug. 6, 2012), attached at **Tab H**.

For all these reasons, without access to off-reservation property on which economic development is viable, tribal members have little hope of escaping generations of grinding poverty. *See also* the discussion under section 151.3(a)(3) above.

- **§ 151.10(c) Planned land use.**

The Los Coyotes Band wishes to use the property for development of a Class III gaming facility and related restaurant and retail facilities, convention and entertainment facilities and a hotel. In addition, the Tribe may at some point in the future wish to develop ancillary businesses, with the MSA allowing for a Recreational Vehicle Park, theme or amusement park, water park, small-scale amusement park, bowling center, night clubs or bars and entertainment venues (stadiums or arenas, including rodeo arenas). *See* Exhibit B of Amended MSA, attached at **Tab C**.

- **§ 151.10(d) Acquisition of trust land for an individual Indian.**

This section does not apply because an individual Indian is not making the request for trust status.

- **§ 151.10(e): Impact on state and local taxes.**

We anticipate that the impact on the local tax base of removing this property from the tax rolls will be negligible. In 2010 and 2011, the taxes assessed on the property were \$6,633.51 and \$6,700.66, respectively. *See* Tax Assessments at **Tab I**.

The Tribe understands that development of the property as currently contemplated will result in increased financial burdens on the City (resulting from the cost of providing municipal services not currently needed on the undeveloped property) without a concomitant increase in property tax revenue. To relieve that additional burden, the Tribe has agreed to reimburse the City for municipal services that normally would be paid for through property taxes. That agreement is embodied in the Amended Municipal Services Agreement between the City and the Tribe dated August 21, 2006. *See* **Tab C**.

In the Amended MSA, the Tribe has agreed to make "Gaming Revenue Payments" to compensate the City for the potential loss of tax revenues from the land, improvements and commercial activities conducted by the Tribe on the trust property at the rate of four and three tenths (4.3) percent of "Net Win on Class III electronic games of chance." *See* Amended MSA § 13. Based on the estimated gaming machine revenue of \$100.2 million, this would result in a \$4.4 million revenue share for the City. In addition, the Tribe has agreed to make payments to the City that are equivalent to the amount of service, development, and impact fees that would be charged by the City and other local agencies if the land were not held

in trust status. *Id.* at § 5 A. Payments to the Barstow Fire District and the Barstow Unified School District will be paid according to the rates established by prior agreement and state statute. *Id.*, see **Tab C**.

We also note that tax revenues would be generated for federal, state and local governments from economic activity associated with construction and operation of the proposed Los Coyotes facility. Local governments include the City of Barstow, San Bernardino County, and other cities in the County that would experience economic activity as a result of the proposed facility. The taxes on secondary economic activity include: corporate profits tax, income tax, sales tax, excise tax, property tax, and personal non-taxes, such as motor vehicle licensing fees, fishing/hunting license fees, other fees and fines. Construction of the Los Coyotes facility would result in an estimated \$5.5 million in State/County/local government tax revenues. Operation of the Los Coyotes Barstow facility would result in an estimated \$2 million in State/County/local government tax revenues from indirect and induced taxes. *See* Draft EIS, Table 4.6-3.

- **§ 151.10(f) Jurisdictional issues.**

Criminal jurisdictional issues: Because California is a Public Law 83-280 state, it generally maintains criminal jurisdiction over tribal members.

Civil jurisdictional issues: While California tribes for the most part are not subject to the civil jurisdiction of the State or its subdivisions, for the purposes of administration of the Barstow parcel the Amended MSA with the City of Barstow addresses how virtually any conceivable jurisdictional issue involving the Barstow property will be handled. A copy of the Amended MSA is provided at **Tab C**.

For example, the Amended MSA provides that the Tribe will enact laws applicable to the Barstow parcel once in trust that will require all tribal development projects on the Barstow parcel to comply with the Barstow Municipal Code then in effect at the time, and to contract with the City to provide planning, building and safety, fire prevention and public works personnel to review construction plans and inspect construction of all improvements constructed on the Barstow parcel. *See* Amended MSA § 2.

Regarding law enforcement, the Tribe and the City have agreed to a variety of general parameters. For example, pursuant to the Amended MSA, the Tribe has consented to the entry of City law enforcement officers onto the Barstow Parcel and into any structures thereon for the purpose of enforcing state and local criminal laws. *See* Amended MSA § 4 and Exhibit G. In addition, the Tribe has agreed that when special events are scheduled to take place at the Barstow property that require the use of extra law enforcement officers, the parties will negotiate appropriate additional compensation to the City to cover such costs incurred by the City in providing additional officers. *Id.* Significantly more detail about the Tribe-City agreement concerning law enforcement can be found in the Amended MSA § 4 and in Exhibit G.

Regarding fire protection and emergency response services, the Tribe has agreed to

compensate the Barstow Fire District for costs associated with the provision of those services. *See* Amended MSA § 5 and Exhibit H. To ensure its ability to meet the additional demand, the City agreed to purchase a fully equipped Emergency Medical Services Response Vehicle for which the tribe would reimburse the City at the beginning of year three of proposed facility operations. *Id.* at § 4.B.1. The Tribe has agreed to dedicate or arrange for the dedication of one and one-half acres of non-federal land near the proposed facility for the construction of a new fire station. *Id.* at § 4.B.3. In addition the Tribe has agreed to reimburse the City for the construction of the new fire station. *Id.* Furthermore, the Tribe has agreed to pay for the training of the Barstow Fire Department in fighting high-rise fires (anticipating that the Tribe's gaming facility may be constructed to a height greater than existing Barstow buildings). *Id.* Significantly more information about the Tribe-City agreement concerning fire protection and emergency medical services can be found in the Amended MSA § 4.B and Exhibit H.

Finally, the Tribe has agreed to various general provisions, including, *inter alia*, that the Tribe will: 1) provide adequate sewage disposal for projects developed on the trust lands, Amended MSA § 7; 2) obtain utilities services from specific providers, Amended MSA § 8; 3) use the City's contracted solid waste disposal company, Amended MSA § 9; and 4) engage in a good faith effort to provide employment opportunities to City residents. Amended MSA § 10.

- **§ 151.10(g): BIA discharge of responsibilities.**

The Bureau of Indian Affairs office nearest to the Barstow parcel is the Southern California Agency, located in Riverside, California, approximately 70 miles away. Because the Los Coyotes Band has entered into a comprehensive Amended Municipal Services Agreement with the City of Barstow, there should be no significant additional burden placed on the Riverside Agency by virtue of the United States' acceptance of trust title to the Barstow property. As discussed in more detail immediately above, the Amended MSA provides for extensive coverage of police, fire, emergency and prosecution services (the City will provide those services in exchange for payment for same). A copy of the Amended MSA is attached at Tab C, and also is discussed in sections 151.10(c), (e), and (f).

- **§ 151.10(h) National Environmental Policy Act (NEPA) Compliance and Hazardous Substance Determinations.**

NEPA: Fee-to-trust acquisitions are subject to the requirements of NEPA, its implementing regulations at 40 CFR Parts 1500-1508, Part 516 of Interior's Departmental Manual (DM) and BIA's NEPA Handbook. On April 19, 2006, BIA published in the Federal Register a Notice of Intent to prepare an EIS under NEPA relating to its review of both the Los Coyotes and Big Lagoon proposals. On May 4, 2006, BIA held a public NEPA scoping hearing for the project at Barstow Community College. BIA then completed the scoping report and commenced preparation of the Draft EIS for the Los Coyotes and Big Lagoon project.

In June 2007 BIA Pacific Region sent the administrative Draft EIS to the cooperating agencies (Los Coyotes, Big Lagoon, NIGC, EPA, and the City of

Barstow) and to the Office of Indian Gaming Management and the Office of the Solicitor at main Interior for review. While the Draft EIS was under review at main Interior, on January 3, 2008, the Department issued its new Commutability Guidance, and the next day, denied the Los Coyotes' March 27, 2006 fee-to-trust and two-part determination application, along with those of eleven other tribes, including Big Lagoon.

As explained above in further detail, on May 19, 2008, Los Coyotes resubmitted its fee-to-trust application and request for a two-part determination for the Barstow parcel to address the new Commutability Guidance. The Tribe's resubmittal made clear that the joint Los Coyotes/Big Lagoon project contemplated in its original application was no longer being considered, and that the Tribe's application now concerned a single Los Coyotes-only gaming facility (and related development) in Barstow.

On the same day that the Tribe resubmitted its fee-to-trust application and two-part determination request, BIA issued a notice of termination of the EIS process for the Tribe's Barstow project. 73 Fed. Reg. 28841 (May 19, 2008). The termination notice did not become effective until June 20, 2008, so Los Coyotes requested, in light of its resubmitted application, that the Department resume the NEPA process for its fee-to-trust and two-part determination request. On June 6, 2008, the Department issued a notice announcing that it would resume the NEPA process and continue its work on the EIS/TEIR for the Los Coyotes trust acquisition and gaming development project in Barstow. 73 Fed. Reg. 32354 (May 19, 2008); *see also* 74 Fed. Reg. 13453 (March 27, 2009); 74 Fed. Reg. 16418 (April 10, 2009) (notices of correction). As explained in the notices and a subsequent letter requesting additional information from the Tribe, *see* Letter from Acting Regional Director Dale Risling to Francine Kupsch, Spokesperson, Los Coyotes Band of Cahuilla and Cupeno Indians (Aug. 26, 2008) (attached at **Tab A**), because the scope of the Los Coyotes trust acquisition and proposed gaming development remained unchanged, BIA would resume its NEPA work without the need for further scoping, and would proceed with consideration of the Tribe's fee-to-trust and two-part determination application. The resumption of the NEPA work was entirely appropriate because the information previously compiled was still current, given the short time period during which the NEPA process had been suspended, and because interested parties would have further opportunity to comment on the Draft EIS when it was released to the public.⁸ Thereafter, the Department continued its work on the Draft EIS, and finally released the Los Coyotes Draft EIS on July 1, 2011. 76 Fed. Reg. 38677 (July 1, 2011). The Preliminary Final EIS is currently under review at main Interior.

Contaminant Survey: A Level I Contaminant Survey for this parcel was completed

⁸ Further, there is ample precedent for the resumption of NEPA compliance work where an agency has suspended that work for a short period of time. *See, e.g.*, 53 Fed. Reg. 19812 (May 31, 1988) (Draft EIS resumed nine months after cancellation of process based on town's decision to resume flood protection project, public meeting held after release of draft EIS); 65 Fed. Reg. 16872 (March 30, 2000) (agency resumes work on EIS one month after company requested agency to stop all work on pending EIS); 60 Fed. Reg. 65639 (Dec. 20, 1995) (suspended NEPA process resumed after four years and draft EIS issued without additional scoping); 62 Fed. Reg. 50428 (Sept. 15, 1997) (cancelled EIS resumed almost two years later with scoping meeting and public hearings scheduled after draft EIS issued). (Copies of these illustrative Federal Register notices are attached at **Tab M**).

in August 2003 as part of the Phase I Environmental Investigation for this parcel, in compliance with the pre-acquisition environmental site assessment requirement imposed by 602 DM 2. That survey confirmed that no known contaminants exist on the property. A copy of the Level I Contaminant Survey is attached at **Tab J**. The Tribe understands that the Contaminant Survey will have to be updated when the Bureau is close to making a decision on whether to acquire trust title to the property.

§ 151.11(b) Land location relative to state boundaries and the Tribe's reservation.

Both the Barstow parcel and the Tribe's reservation are located in the State of California. The Barstow parcel is approximately 115 miles from the Los Coyotes Band's reservation. The attached maps show the location of the Barstow parcel relative to State boundaries, and its distance from the Tribe's reservation boundaries. (**Tab K**).

Section 151.11(b) also specifies that as the distance between the tribe's reservation and the lands to be acquired increases, that the Secretary shall give greater scrutiny to the Tribe's justification of anticipated benefits from the proposed acquisition, and greater weight to the concerns raised pursuant to section 151.11(d). The Tribe's justification of anticipated benefits is discussed above in response to sections 151.3(a)(3) and 151.11(a) (addressing 151.10(b), which focus on the barriers to meaningful economic development and the extremely limited economic and employment opportunities on-reservation, the resulting unemployment, poverty, and lack of infrastructure, adequate housing and tribal government programs, and the expected benefits to the Tribe of the Barstow project as a source of a significant, stable revenue stream to fund tribal government and infrastructure, diversify and strengthen the Tribe's economy, fund new tribal government programs to address infrastructure, housing, health and social programs like education and job training, and thereby create significant employment opportunities both on and off the reservation. Further and more detailed explanation of the expected economic benefits also is provided below in response to section 151.11(c) (which specifically requires submission of a business plan specifying economic benefits associated with the proposed use of the trust land), and in the Los Coyotes Business Plan, which is attached at **Tab E**, as well as the Tribe's Unmet Needs Report, Tab A to the Business Plan. With respect to concerns raised pursuant to section 151.11(d), none have been raised to date as the State and local governments have fully supported the Tribe's proposed project. *See* discussion below in response to section 151.11(d).

Accordingly, the many, significant benefits to the Tribe of placing the Barstow parcel into trust status, namely, allowing the Tribe to generate a stable source of revenue from which it can adequately fund its tribal government and provide governmental health, educational, and social services to its members, create employment opportunities for its members, diversify and strengthen its Tribal economy, achieve economic self-sufficiency and exercise meaningful Tribal self determination, greatly outweigh the non-existent concerns, and the Tribe's acquisition of the Barstow parcel for gaming development is more than adequately justified under Section 151.11(b).

§ 151.11(c) Plan specifying economic benefits associated with proposed use.

For the reasons discussed in detail above, the Tribe has been unable to engage in any meaningful economic development on its existing reservation. As a result, the Tribe remains one of the poorest in California. The severe terrain and remote location of the reservation have prevented the development of all but the most minor of economic activities there. As a result, not only has the Tribe been unable to provide basic governmental, health, and educational services to its members, it has been unable to provide even the most fundamental infrastructure on the reservation. There was no electricity on the reservation until 1999, and much of the reservation still is not wired today. Likewise, wastewater disposal infrastructure is nearly nonexistent, drinking water systems are substandard, and roads are limited and in poor condition. *See* Los Coyotes Business Plan, attached at **Tab E**; see also discussion above in sections 151.3(a)(3) and 151.11(a) (addressing 151.10(b)).

Living conditions for Tribal members on the reservation are severely substandard, and there is little hope of meaningful economic development on the reservation to address the situation. The Tribe's government is severely under-funded and understaffed; the few employees that work for the Tribal government have no Tribal-sponsored health insurance, retirement plans, or any other employment benefits. The Tribe has no police or fire department, no health or educational facilities; no elder or youth programs, no cultural or natural resources programs, and extremely limited social services available to its members. *See id.*

The Tribal business plan is a blueprint for reversing over a century of abject poverty suffered by the Los Coyotes Band. The Los Coyotes Business Plan establishes a strategy for generating revenue to better the lives of tribal members through enhanced tribal government operations and infrastructure, including housing, education, social services and other tribal government programs, so that the Tribe can be economically self-sufficient, exercise true self-determination and secure the necessities that 99% of America takes for granted. The Tribe considers improving the daily lives of the Los Coyotes people, and preserving the integrity of the Tribe's culture, language and self-governance among its most pressing priorities. The Tribe's mission is to acquire trust land in Barstow from which the Tribe can operate a Class III gaming facility that will generate revenue to fund and administer sorely needed governmental and social programs and services for its members, consistent with these Tribal priorities. *See* Los Coyotes Business Plan, attached at **Tab E**.

The proposed gaming facility will assist the Tribe to achieve the following goals:

- Develop and fund basic tribal government operation and infrastructure.
- Develop and fund the wide array of social, educational, environmental, housing, cultural, and other programs and services needed by tribal members.
- Provide tribal members with meaningful employment opportunities.
- Generate seed money with which to create and diversify the tribal economy, thereby making the economy more stable and creating more sophisticated and more diverse career/professional opportunities for tribal members.

Id. The proposed gaming facility at the Barstow site is expected to generate a significant amount of revenue within a reasonable period of time which will allow the Tribe to accomplish these goals. In particular, the Tribe intends to use the increased income from its proposed gaming facility to target several specific areas relating to infrastructure and tribal government programs on the reservation:

1. **Lack of electricity on the reservation.** The limited availability of electrical service on the reservation has stymied Tribal economic development of the Tribe and resulted in a substandard living level for Tribal members. The increased income will allow the Tribe to build the electrical transmission infrastructure necessary to bring power to the remaining portions of the reservation which will be acceptable for residential, governmental, or commercial usages.

2. **Tribal water system.** The Tribe's water systems is woefully inadequate (and unsafe) even for the residential purposes that it currently serves, and it certainly could not support service for any additional homes or other development. The Tribe will use the increased funds to establish a drinking water program with the necessary infrastructure to meet the federal requirements for public drinking water systems, meet the needs of tribal members currently living on the reservation, and allow other members to move to the reservation. The Tribe will upgrade and expand the existing water system so that all tribal members would have access to potable and reliable drinking water. Because of the reservation's geography, this will necessarily include constructing new lift stations and water grid systems to carry the water up hills/in rugged terrain.

3. **Housing.** The majority of the reservation's housing stock is inadequate. There are 23 residences on the reservation made up mostly of dilapidated mobile and modular homes and a few HUD units. The new funds would allow the Tribe to aggressively confront its housing issues. The Tribe would first install the basic infrastructure necessary to support the existing homes such as roads, water systems, and electrical capacity. Where practical the Tribe would upgrade existing homes with indoor plumbing and wiring for electricity. However, the current state of the reservation's housing stock is such that the Tribe would have to replace many of the residences because it is infeasible to perform the large amount of upgrades that would be necessary.

4. **Roads.** There is only one road leading into and out of the reservation, which poses a significant safety hazard. Currently, there are only approximately 10.3 miles of paved road on the reservation, and the steep terrain makes road construction and maintenance extremely cost-intensive. The new funds would be used to establish a tribal Roads Department to oversee road and infrastructure projects on the reservation. The Roads Department would ensure that the Tribe's existing roads are well-maintained and would make the repairs that are now so desperately needed. The Tribe would also make major investments to pave the numerous dirt roads on the reservation including the road to San Ignacio Valley.

5. **Tribal Government Buildings.** There are only four governmental buildings on the reservation: the tribal hall, the tribal administration office, the tribal EPA office and the tribal EPA water office. All of these buildings are small and in need of

significant repair and modernization. The Tribe would use the new funds to construct new, larger, more modern tribal government buildings, with room for additional tribal government staff, updated heating and cooling systems, indoor plumbing, adequate meeting facilities, and modern office equipment such as computers and fax machines as well as reliable Internet service. The Tribe would also use new funds to build a gymnasium for all residents, which also could house youth programs, and to create some community open space for cultural gatherings.

6. Education. The reservation has no school for tribal children, and no education and training center for adult tribal members. The lack of educational opportunities has hindered the development of the Tribe and its members and exacerbated the overall unemployment and poverty rates on the reservation. The Tribe would use the new funds to invest in its members. An education fund would be established to assist all members in attaining higher education. Job training/career development programs would be established for tribal members residing both on and off the reservation to assist them in seeking employment with the Tribe and to assist them in obtaining better and more fulfilling employment in general. Tribal assistance programs would be established to help people attain high-school diplomas or General Education Degrees (GEDs), so that Tribal members can obtain better-paying, quality employment.

7. Fire/Police. The Tribe does not have a tribal Fire Department or Police Department. It has a police chief funded by the Revenue Sharing Trust Fund, but he alone cannot address all the law enforcement issues on the Reservation. Currently, the Tribe relies on the surrounding communities to assist with these needs but because of the Tribe's isolated land base, the response time is dangerously too long. The Tribe would use its funds to establish and staff both a tribal Fire Department and Police Department.

8. Cultural Resources. The Tribe has no facility for community gatherings or cultural events. The Tribe would use its new funds to build such a space and establish a cultural resources program to ensure the enhancement and protection of tribal culture. The Tribe would also like to build a museum that would be built with the new funds.

9. Elder/Youth Programs. There currently are no elder or youth programs. Tribal revenue from the gaming facility would be used to establish these programs, possibly construct an elders center, and provide transportation for elders who cannot drive. Youth programs would be operated out of the new gymnasium and help parents and children to lead healthier and happier lives.

10. Environmental Program. The Tribe has an existing environmental protection program but it is under-staffed and under-funded (and relies largely on federal EPA funding) The new funds would allow the Tribe to expand its existing program and develop new initiatives, including the establishment of a Tribal water laboratory (for testing), an expanded recycling program, a household hazardous materials disposal program, and a more extensive stream bank restoration project, among other things.

11. **Natural Resources Program.** Finally, the Tribe would also develop a natural resource protection program to address preservation of natural resources on the reservation, including assisting with invasive species identification and removal, and addressing the destruction of trees on the reservation caused by the bark beetle infestation. The Tribe would also hire a natural resources officer to assist law enforcement in addressing the wildlife poaching problem.

More information regarding these planned uses of revenue is included in the Los Coyotes Unmet Needs Report, Tab A to the Los Coyotes Business Plan, attached at **Tab E**.

Finally, the Tribe also intends to use revenues generated by the gaming facility to diversify and strengthen the Tribe's economy. Diversification of the tribal economy will provide additional employment opportunities for tribal members, ensure that the Tribe is well positioned in the event of economic downturns in one segment of its investments and thus stabilize the Tribe's economy. *See* Los Coyotes Business Plan; *see also* Los Coyotes Unmet Needs Report, Tab A to Business Plan.

The Los Coyote Business Plan also provides a market analysis summary, a plan for implementation of the various steps necessary to achieve the Tribe's business objectives, and detailed financial information and a financial plan for achieving its goals and objectives. *See* Los Coyotes Business Plan, attached at **Tab E**. Because the Business Plan contains confidential business information, the information is protected from disclosure under the Freedom of Information Act, 5 U.S.C. §552(b)(4), and the Tribe asks that BIA not release the Business Plan to the public.

The benefits to the Tribe of placing the Barstow parcel into trust status cannot be overemphasized: in a nutshell, the trust acquisition of the Barstow parcel for gaming development will allow the Tribe to generate a stable source of revenue from which it can adequately fund its tribal government and provide governmental health, educational, and social services to its members, create employment opportunities for its members, diversify and strengthen its Tribal economy, achieve economic self-sufficiency and exercise meaningful Tribal self determination.

§ 151.11(d) **Contact with state and local governments.**

As reflected in the Amended MSA, subject to satisfactory environmental review (which is now near completion), the City of Barstow supports this trust acquisition. *See* Amended MSA § 19.

Former Barstow Mayor Dale reinforced and reiterated this support for the project in a 2006 letter sent after approval of the amended MSA, and in a subsequent 2008 letter sent after BIA's issuance of the Commutability Guidance and its denial of the Tribe's initial March 2006 application. *See* Letter from Mayor Lawrence E. Dale to Secretary Dirk Kempthorne (Sept. 5, 2006); Letter from Mayor Lawrence E. Dale to Chairman Nick J. Rahall II, and Ranking Member Don Young, Committee on Natural Resources, U.S. House of Representatives (March 26, 2008), both attached at **Tab L**. Most recently, the City again expressed its strong support for the project in a June 2012 City Council resolution, which stated that the proposed development will

benefit the City and the Tribe by providing jobs and economic growth to the area, and requested that the Department approve the Tribe's fee-to-trust application as quickly as possible. *See* City Council of the City of Barstow Resolution No. 4669-2012 (June 18, 2012), Tab K to August 2012 Amended Two-Part Determination Request.

The Tribe also has had the support of the Governor for its Barstow project, as evidenced by the site-specific tribal-state gaming compact that the former governor signed with the Tribe in 2005. Although the California State Legislature declined to ratify the compact due to the Bush Administration's reversal of the Department's previous long-standing policy of allowing review and approval of site-specific compacts identifying land for which the fee-to-trust process was not yet completed, at no time did the Governor withdraw his support for the Tribe's Barstow application. Now that the Department has revisited that Bush Administration policy and Governor Brown has replaced Governor Schwarzenegger, the Tribe has initiated contact with the new Governor's office and expects to negotiate another Tribal-State compact and submit it to the Department for review at the appropriate time.

The Los Coyotes Band here provides a list of state and local government contacts to assist the Bureau of Indian Affairs in its efforts to consult with state and local officials. (Tab N).

§ 151.12 Action on Requests.

This section describes actions taken by the Secretary of the Interior. To the extent that the Secretary requests additional information, the Los Coyotes Band will be happy to respond to those requests promptly.

§ 151.13 Title Examination.

The tract of land that the Tribe seeks to acquire in trust is approximately 23.1 acres, and has the following legal description:

All that real property located in the City of Barstow, County of San Bernardino, State of California described as follows:

Parcels 2 through 4, inclusive, of Parcel Map No. 14373 in the City of Barstow, County of San Bernardino, State of California, as per map recorded in Book 170, Pages 5 and 6 of Parcel Maps, in the Office of the County Recorder of said County.

This tract of land and existing rights of way are described in greater detail in the Commitment for Title Insurance and supporting documents, and land title survey which are included in Tab O. This Title Insurance Policy was prepared by Title Source, Inc., as agent for First American Title Insurance Company, which is authorized by law to prepare title insurance policies in the State of California.

§ 151.14 Formalization of Acceptance.

This section describes actions taken by the Secretary of the Interior and requires no response.

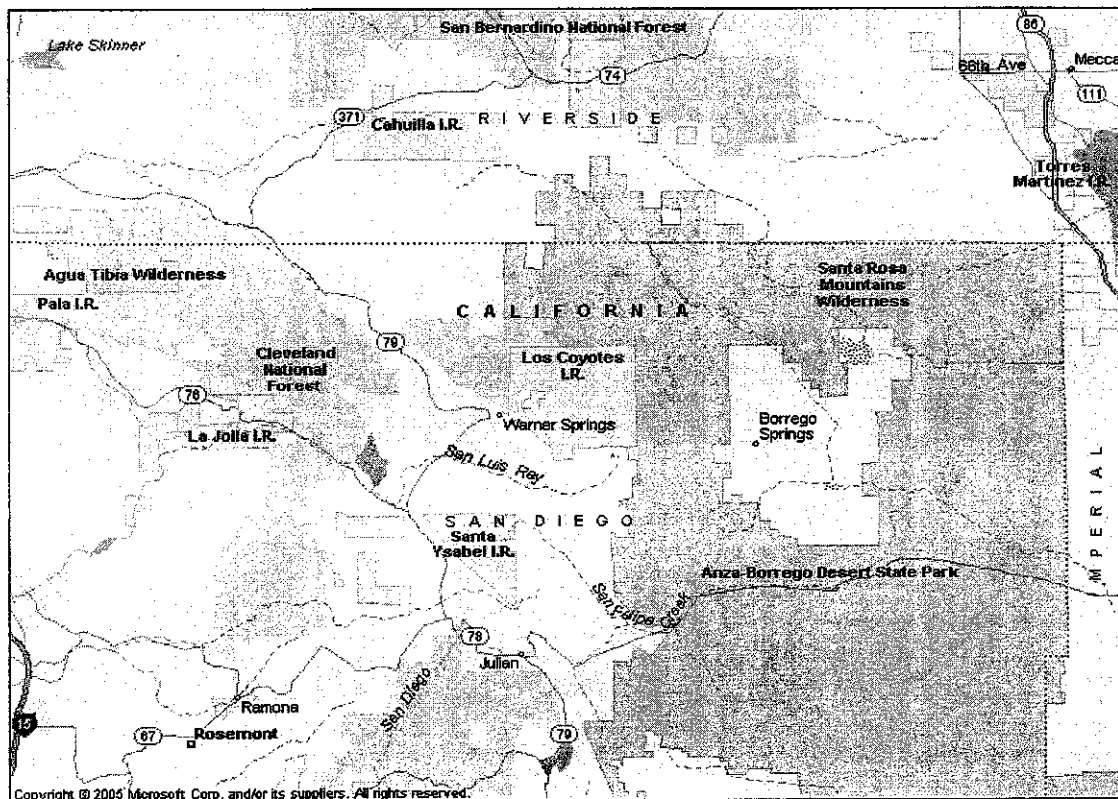
§ 151.15 Information Collection.

This section describes the information collection process and requires no response.

PART II GENERAL OVERVIEW

A. Brief History of the Tribe and its Reservation

The Los Coyotes Band's members are descended from the Cahuilla and Cupeño people who have lived in the foothill and mountain regions of inland Southern California since time immemorial. The Cupeño occupied the area of what is now known as Warner's Hot Springs and the Cahuilla occupied the hills immediately to the east. The latter is the location of the Los Coyotes Band's reservation.



Like other tribes in Southern California, the gold rush of 1849 and rapid non-Indian settlement thereafter resulted in devastating losses of life and land for the Cahuilla and Cupeño tribes such that only a decade after the gold rush these tribes had been profoundly affected. “[N]on-Indians viewed Cahuilla territory as desirable land, and conflicts arose over who had the right to own

and use this land. Often, the non-Indians moved into fields prepared by Cahuillas and simply took them over. They also used springs and streams that belonged to the Cahuillas, a particularly objectionable form of trespassing in such an arid area.” Lowell John Bean and Lisa Bourgeault, *The Cahuilla* 88 (1989). See Historical Materials at Tab K. The negative effects of non-Indian encroachment were greatly heightened by the effects of non-Indian diseases. In the early 1860s, a smallpox epidemic decimated the Cahuilla population, resulting in a population decline from an estimated 6,000 to 10,000 to approximately 2,500. *Id.* at 89.

The Cupeño too were adversely affected. Writing in 1929, preeminent anthropologist William Duncan Strong⁹ recounted the persistent conflict surrounding occupation of the Cupeño’s traditional area near what is now known as Warner Springs dating back to the gold rush days:

Quarrels between the Cupeño and the owner of the land grant, Mr. Warner, led to the insurrection of 1851 and the subsequent retreat of the Cupeño to Los Coyotes canyon, while the troops burned their town. Cavalry under Major Heintzelman pursued the Indians to Los Coyotes canyon and brought them back. Five of the ringleaders . . . were captured[.] These were executed, but the remainder of the Cupeño were allowed to remain in their old territory until the expulsion of 1902.

* * * *

At present the adobe houses used by the Indians have been somewhat rehabilitated and are used as guest rooms by the local hotel. The stream where the Indians formerly bathed, leached acorns, and soaked fiber for baskets, now runs into a swimming pool and a series of bath houses. Bedrock mortars and other signs of the old life are abundant, but the Indians are gone.

William Duncan Strong, *Aboriginal Society in Southern California*, at 184 – 185 (1929).

The non-Indian land grab of the mid-nineteenth century continued unabated through the rest of that century. In 1885, the Secretary of the Interior reported attempts by non-Indians forcibly to take Los Coyotes’ tribal lands near Warner Springs:

About three weeks before our arrival at Warner’s ranch a man named Jim Fane . . . appeared in the [Indians’] village and offered the Indians \$200 for their place. They refused to sell, upon which he told them that he had filed on the land, should stay in any event, and proceeded to cut down trees and build a corral. It seems a marvelous forbearance on the part of a community numbering twenty-six able-bodied men and twenty-one women not to take any forcible

⁹ “Strong was educated at the University of California at Berkeley and obtained his doctorate in anthropology in 1926, studying under Alfred Kroeber. As a student, Strong worked on Californian and Peruvian archaeology projects, but upon completing his degree he embarked on an extended ethnographic study of the Naskapi of Labrador. In 1931, he joined the Bureau of American Ethnology, a research bureau of the Smithsonian Institution dedicated to the study of native cultures in the Americas.” Smithsonian Institution, National Museum of Natural History website, <http://www.nmnh.si.edu/naa/features/strong.htm>.

measures to repel such an intruder as this. But the South California Indians have learned by long experience that in any contest with white men they are sure to be found in the wrong. Not an Indian laid violent hands on Fane. He seems to have gone about as safely in the heart of this Indian village, which he was avowedly making ready to steal, as if he had been in an empty wilderness. . . . He was a rough fellow, at first disposed to be defiant and blustering, but on being informed of the Department's action in the case of Cloos's filing [canceling a non-Indian claim to other Indian lands] he took a milder tone, and signed a paper saying that he would take \$75 for his "improvements." Later in the day . . . he withdrew the paper and announced his determination to stay in the valley. On inquiry at the land office at Los Angeles we found that his filing had been returned to him for correction of errors. We were therefore in time to secure the stopping of all further proceedings on his part through the land office. Nothing, however, but authorized and authoritative action on the part of the agent representing the Interior Department will stop his proceedings on the ground. Just before leaving California we received an urgent letter from the Los Coyotes' captain, saying that Fane was still there – still cutting down their trees and building corrals.

Message from the President Transmitting a communication from the Secretary of the Interior relative to the relief for the Mission Indians in California, S. Ex. Doc. No. 15, at 20 (1885).

Perhaps in reaction to the 1885 report, in 1889 a reservation was established by Executive Order for the Cahuilla and Cupeño people. Not long after its establishment, a special agent for California Indians reported to the Commissioner of Indian Affairs on the Conditions of the California Indians. March 21, 1906 Report from Special Agent for California Indians to the Commissioner of Indian Affairs, reprinted in *Indian Tribes of California: Hearings Before a Subcommittee of the Committee on Indian Affairs House of Representatives*, 66th Cong. 122 – 137 (1920). The Special Agent explained that he "visited and personally inspected almost every Indian settlement between the Oregon line and the Mexican border, and has used every effort to make his inquiry complete and exhaustive." *Id.* at 122. Regarding the condition of the Los Coyotes Reservation, the Agent reported:

Los Coyotes is a large reservation on paper, being nearly a township of land. It is quite elevated, being from 4,500 up to 8,000 feet. *The reservation is nearly all barren mountain tops, and the agricultural land is confined to narrow strips in the San Ysidro and San Ygnacio Canyons, about 275 acres. A large part of this is owned in all by a white man and was patented before the reservation was established. There are also two valleys or hollows in the mountains which have some feed for cattle, and are also patented land.* The Indians say that the Government promised them to buy this patented land. Whether such a promise was made your special agent does not know. It is a fact that the Government did buy out one white homesteader in the San Ysidro Canyon. These Indians are the only ones I have found in California

who are inclined to be belligerent. They have been frightened by the fate of their neighbors on Warner's ranch, and have determined to allow no white man on their reservation. They have occupied the patented lands and show a disposition to hold them by force. If the owners insist on their rights, a small sized Indian war is likely to result. It seems to your special agent that the Indians' demand for this land is just. It was a rancheria site, and as such could not be filed upon without something closely approaching perjury. The patents are now issued, however, and the title has passed to parties who have acquired it in a legitimate manner – I believe upon a mortgage. I would, therefore, recommend an appropriation to buy this land.

Id. at 136-37 (emphasis added). Two tracts of land (160 acres each) within the Reservation were sold back to the United States in 1893 and 1900. *See* patents attached at **Tab P**. Shortly after the 1906 Report, the United States purchased a 160-acre tract originally patented to Robert Fain. This parcel is located in the southern portion of the Reservation. In 1914, an Executive Order transferred additional lands from the Cleveland National Forest to the eastern boundary of the Reservation. Exec. Order, dated April 13, 1914 (attached at **Tab P**).

B. The Los Coyotes Band's Reservation Today

The Reservation is located approximately 70 miles from San Diego, California, sandwiched between the Cleveland National Forest and the Anza-Borrego Desert State Park. It remains largely undeveloped, which can be attributed both to its remote location and to its unforgiving landscape. The terrain of the Reservation is rugged, with “[m]ore than 75 percent of Reservation land . . . on slopes exceeding 17 degrees.” 1998 Environmental Assessment of the Los Coyotes Indian Reservation, prepared in conjunction with the U.S. Environmental Protection Agency, at 3. Elevations on the Reservation range from 3,450 feet to 6,530 feet. *Id.* at 1.

Not unsurprisingly, because the reservation is largely undeveloped, it provides habitat to rare and endangered species. Supporting a diverse wildlife habitat, the reservation serves as a “prime habitat for a variety of birds, mammals, and reptile,” and “is of primary importance to bio-diversity in the region.” *Id.* at 7. For example, portions of the Anza-Borrego State Park (which is adjacent to the Los Coyotes Reservation) is designated as critical habitat for the endangered Peninsular Bighorn Sheep (*Ovis Canadensis nelsoni*). *See* 63 Fed. Reg. 13134 (Mar. 3, 1998) (designating the Peninsular Bighorn Sheep as endangered); 66 Fed. Reg. 8650, 8674-8675 (Feb. 1, 2001) (designating critical habitat). Similarly, the Environmental Protection Agency (“EPA”) has identified areas within the Los Coyotes Reservation where pesticide use should be limited to protect the Peninsular Bighorn Sheep. *See* Protecting Endangered Species Interim Measures for Use of Rodenticides in San Diego County, Pesticides and Toxic Substances, United States Environmental Protection Agency, at 11 (1998).

CONCLUSION

For 115 years the Cahuilla and Cupeño people of the Los Coyotes Reservation have been relegated to a portion of their ancestral homelands that is nearly incapable of providing a livelihood for tribal members. Los Coyotes tribal members as a group are poor, unemployed, and without hope of being able to improve their lives without access to meaningful economic development

opportunity. Rather than continuing to rely on government hand-outs, the Tribe and its members wish to be given the same opportunity that has been afforded to many other tribes in California – the opportunity to earn a decent wage, to live in a clean, safe home, to be self-sufficient, and to control their own destiny. The City of Barstow strongly supports the Tribe's request because it will serve both the best interests of the Tribe and the City.

For these reasons, the Los Coyotes Band hereby requests that the Secretary of the Interior accept trust title to the Barstow property on behalf of the Tribe.

The Los Coyotes Band has made every effort to comply with the Department's regulations and guidance governing its fee-to-trust application, and believes that all required information has been provided through this submission.

If there are any questions about this submission or any of the Tribe's prior submissions, please feel free to contact either Shane Chapparosa, Tribal Spokesperson, at 951/452-9353, or counsel for Los Coyotes, Heather Sibbison (202/408-6439) or Suzanne Schaeffer (202/408-7097). We will be happy to provide BIA with any assistance needed as it continues to move forward in its review of our fee-to-trust application.