



County of San Diego

LAND USE AND ENVIRONMENT GROUP

SARAH E. AGHASSI
DEPUTY CHIEF ADMINISTRATIVE OFFICER

1600 Pacific Highway, Room 212, San Diego, CA 92101
(619) 531-6256 • Fax: (619) 531-5476
www.sdcounty.ca.gov/lueg

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Amy Dutschke, Regional Director
Pacific Regional Office
Bureau of Indian Affairs
2800 Cottage Way
Sacramento, CA 95825

RESPONSE TO NOTICE OF APPLICATION TO ACCEPT THREE PARCELS TOTALING 345.32 ACRES TO TRUST FOR THE PALA BAND

Dear Ms. Dutschke:

The County of San Diego (County) received the Notice of Application (Notice) from the Bureau of Indian Affairs (BIA) seeking acceptance of title to real property "in trust" for the Pala Band of Mission Indians of California (Pala Band) on July 18, 2011. The Notice states the proposed acquisition by the United States for the Pala Band to comprise three parcels (Assessor Parcel Numbers 109-141-03-00, 109-371-04-00 and 109-160-05-00) totaling 345.32 acres located in the unincorporated area of San Diego County.

This letter is to provide written comments and response requested in the Notice. The County is a political subdivision of the State of California responsible for the governance, health and welfare of the people of San Diego County. The County's comments relate to issues within our statutory responsibilities and impacts of the proposed action in addition to the criteria for evaluating fee to trust (FTT) applications under the Indian Reorganization Act, 25 U.S.C.465 (IRA). The County is opposed to the proposed action to take the land into trust for a variety of reasons, which this response will outline.

I. Need Of The Tribe for Additional Land

The regulations implementing the IRA (25 CFR § 151.10(b)), require the U.S. Department of Interior (DOI) to evaluate the need of the Tribe for additional land. The Notice does not indicate that there was any evaluation of this criterion.

The Pala Band currently has 11,334 acres in trust and the Notice states that the property is mostly undeveloped, but for a small, old and abandoned adobe structure, and that the Pala Band has no present plans to develop the property. Therefore, there appears to be no need to place this additional land into trust. Consequently, the County objects to the taking of this property into trust where there is no need.

II. Significant Jurisdictional Issues and Potential Conflicts

The DOI is required to consider among other things “[j]urisdictional problems and potential conflicts of land use which may arise” in evaluating fee to trust applications (25 CFR §. 151.10(f)). The County objects to taking this property into trust because it has the strong potential to result in significant jurisdictional conflict between the County and Pala Band, as two entities with regulatory authority, regarding the identified County road easement. The portion of Pala Temecula Road included within the FTT application is on the County Road Register as a County maintained road. The title report included with the Pala Band’s fee to trust application identifies the Pala Temecula Road easement as including the road and also “the privilege and right to extend drainage structures and excavation and embankment slopes beyond the limits where required for the construction and maintenance thereof.” The County’s road easement is a “floating easement” in that the limits of the easement are undefined and can fluctuate as the County’s needs to provide drainage and support for the right-of-way change.

A floating easement in favor of the County for road purposes presents the possibility of significant jurisdictional problems and conflicts. Having accepted Pala-Temecula Road into the maintained system of streets, the County can potentially be held liable for accidents on the road (*Streets & Highways Code 941*). If the Pala Band retains any regulatory control over the area covered by the road and immediately adjacent to it, this could lead to significant liability problems for the County and result in conflict between the Tribe and County. Tribal ordinances regulating traffic movements such as speed limit, the placement of objects in close proximity to the road such as billboards that may distract drivers and obstruct sight distance, or prevent or limit maintenance or construction activities by requiring Tribal EIRs or permits are just a few examples of potential significant sources of conflict. This problem is magnified here because the limits of the County’s easements are undefined and “float.”

III. Conflicts with Local Land Use Plans

While we note that there is currently no proposal to change any of the land uses, and the land is mostly undeveloped at this time, there is also no assurance that the land use will not change in the future. As stated in the Notice, approximately 67 acres of the property are appropriate for development purposes. Once the land is removed from County land use jurisdiction, the Pala Band may commence any uses it desires on the property.

Recently the County of San Diego has undertaken extensive General Plan and Multiple Species Planning efforts, which included planning for this property. During this planning process the County consulted with the various tribes in the region to ascertain their plans for the properties they own, and made every attempt to reflect those plans in its General Plan and zoning designations.

In addition, the County has been planning a multi-species habitat preservation plan, in partnership with the DOI for a number of years. This property is included in that plan as further explained below. Removing this land from the County’s jurisdiction would be deleterious to the County’s planning efforts, both under the General Plan and the Multiple Species Conservation Plan.

IV. Acreage Discrepancy

The Notice states that 345.32 acres will be moved to trust. County records show that the actual acreage of the three parcels is 330.22 acres. The discrepancy includes the taking of road easements. The County is opposed to the taking of public right of way. The application should be reissued and recorded with the correct acreage.

V. Other Concerns

The parcels are contiguous with the Pala Reservation and are located north of State Route 76 and one mile south of Rancho Heights Roads, which is north of the Pala Casino Resort. Should the land be developed, the County is concerned that the infrastructure needed to support development may adversely affect County resources and the surrounding environment. When these lands are taken into trust, the impacts of gaming and other uses of the property are expanded outside of existing reservations at an intensity that may not be compatible with the surrounding area. The impact on residents of adjacent communities may exceed anything that could have been reasonably anticipated, and can occur without the traditional land use planning process and opportunity for comment that local governments provide their residents. Impacts can occur not only due to incompatible land uses, but also can occur due to traffic generation, groundwater capacity, biological resources, and a host of other sensitive resources.

Any future development on the parcels, including expanding casino or hotel center related activities in particular, should require the Pala Band to enter into an Intergovernmental Cooperative Agreement with the County of San Diego to mitigate off reservation impacts that would result from any future proposed development. Prior to acquisition of the land, proposed future uses for the parcels should be identified and a thorough environmental assessment of the proposed uses should be provided.

The County's response to the request for information in the Notice is provided below.

1. The annual amount of property taxes currently levied on the subject property allocated to your organization.

The County currently collects \$34,762.50 per year of taxes and special assessments levied on the three parcels. This action proposes a transfer of 330.22 acres, not the incorrectly stated acreage of 345.32 acres, of land currently under the jurisdiction of the County, for which the current land and improvements is valued at \$1,800,000 (2010/2011 valuation). The land is mostly undeveloped which lowers the assessed value. This annual loss will be further compounded based on the assessed value of the property projected in future years. In addition, this current application in combination with other approved and pending applications for local Tribal Nations has a cumulative fiscal impact on the County that should be analyzed as part of any BIA application that proposes to acquire land currently under the jurisdiction of the County.

Please see the breakdown on the following page that provides a summary of the current distribution of taxes and special assessments levied for the three parcels (Assessor Parcel Numbers 109-141-03-00, 109-160-05-00 and 109-371-04-00) in fiscal year 2010-2011.

Taxing Jurisdiction	1% Levy	Gen. Obligation Bonds	Special Assessments	Total
County	\$3,823.51	\$0.00	\$11.16	\$3,834.67
County Library	726.68	0.00	0.00	726.68
Upper San Luis Rey Resource Conservation	12.87	0.00	0.00	12.87
Valley Center Cemetery District	22.01	0.00	0.00	22.01
Escondido Union High	0.00	413.80	0.00	413.80
Valley Center-Pauma Unified School District	7,155.44	0.00	0.00	7,155.44
Palomar Community College	1,674.78	264.96	0.00	1,939.74
County Office of Education	707.07	0.00	0.00	707.07
ERAF – Schools	2,976.12	0.00	0.00	2,976.12
Palomar Pomerado Healthcare District	619.11	422.99	0.00	1,042.09
Rainbow Municipal Water District	192.88	0.00	5,101.88	5,294.76
Metropolitan Water District	0.00	3,441.60	3,803.92	7,245.52
San Diego County Water Authority	89.53	0.00	3,302.20	3,391.73
Total:	\$18,000.00	\$4,543.35	\$12,219.16	\$34,762.50

2. Any special assessments, and amounts thereof, that are currently assessed against the property in support of your organization.

The loss of tax revenue that is collected for several agencies may affect public services in the area. Tax revenues are currently collected for the County General Fund, the County Library, Upper San Luis Rey Resource Conservation, Valley Center Cemetery District, Escondido Union High, Valley Center-Pauma Unified School District, Palomar Community College, County Office of Education, ERAF – Schools, Palomar Pomerado Healthcare District, Rainbow Municipal Water District, Metropolitan Water District and San Diego County Water Authority.

3. Any governmental services that are currently provided to the property by your organization.

The County provides services to this area as follows:

A) Transportation and Circulation

The three parcels proposed for transfer to trust contain County maintained and serviced roadways. Additionally, other public services, including emergency services (fire, police, medical, etc.), are provided to these parcels via these County maintained roadways.

- 1) Pala Temecula Road traverses along the frontage and through the parcels proposed for acquisition into trust. Pala Temecula Road is a County of San Diego maintained road. County easements and rights to maintain the existing road must remain with the County and not be transferred or affected by any land acquisition into trust.
- 2) The Notice for this land acquisition application identifies 345.32 acres. When the existing road easements are considered the acreage is 330.22 acres, which should

not be included in this proposed action due to the potential for jurisdictional conflict as stated above.

- 3) The creation of any future access points from the three parcels to Pala Temecula Road will require an encroachment permit and improvements, as needed, to ensure safe and adequate access.
- 4) Pala Temecula Road is classified as a 2.2D Light Collector with improvement options on the County's General plan Mobility Element. The overall right of way width for this classification is 88 feet. If the parcel was developed as a subdivision in the County, the County would be able to obtain dedications and easements for the ultimate right of way width. Provisions and or dedications should be made at this time to ensure and not preclude construction of the ultimate road classification when needed in the future.
- 5) Pala Temecula is a road that was constructed many years ago according to standards in affect at the time it was constructed. Many curve radii and shoulder widths do not meet current County of San Diego standards. Realignment of several curves is needed to improve Pala Temecula road to current County standards. Provisions and or dedications should be made at this time to ensure and not preclude construction curve realignments and incremental widening when needed in the future.
- 6) If the parcels remained in the County's jurisdiction, the County would have the ability to acquire or condemn the property for future road improvements on Pala Temecula Road such as widening and realignments. Measures should be enacted prior to acquisitions of the parcels to ensure that future needed road improvements to Pala Temecula Road will not be precluded in the future.
- 7) The County currently has and maintains drainage easements and structures on the three parcels proposed for acquisition. Provisions should be made at this time to ensure and not preclude maintenance and continuity of these easement rights and to allow for any additional improvements that may be needed.
- 8) The proposed transfer of the parcels into trust will remove the County's jurisdiction over these parcels and remove the County's ability to collect revenue sources utilized to maintain these public roadways. Revenue sources lost, without County jurisdiction over these parcels, include Transportation Impact Fee (TIF). Without jurisdiction over these parcels, the County would not have the authority to collect a TIF for any future development on these parcels. This may affect the County's ability to provide future road improvements in the area if and when the parcels are developed in the future.
- 9) Pala Temecula Road fronts and traverses the three parcels proposed for acquisition. Without a clear plan identifying the future use of the parcels proposed in the FTT action, the full impact and potential need for mitigation to the FTT action on Lake Wohlford Road has not been identified or analyzed.

- 10) A Certificate of Compliance is in effect on at least one of the parcels proposed for acquisitions. The conditions and requirements contained therein should remain in effect and be satisfied prior to any future development on the parcel or parcels in which the Certificate of Compliance applies.

B) Fire and Emergency Services

The property is currently in the County Fire Authority service area (CSA-135). Shift from the County jurisdiction to trust will eliminate tax revenues used to support the fire authority services. This addition to the Reservation reduces the acreage and potential for land development in the County area generally north of the Reservation. This reduction makes it more difficult to generate adequate funding for fire and emergency services, and to site a fire station within a reasonable travel time for emergency service delivery.

- 1) Over the years, the San Diego County Fire Authority has enjoyed a good partnership with the Pala Reservation Fire Department. This has included some emergency coverage of the County area north of the subject property. If the property is moved to trust, formalization of the partnership through an agreement between the County and the Pala Band is encouraged to ensure continuity of fire and emergency medical services to that area, for mutual benefit.
- 2) The property is currently in designated "Wildland Urban Interface" area, and State Responsibility Area. It is ranked as "Very High" Fire Severity Zone – the highest risk category. It is now located in the San Diego County Fire Authority jurisdiction, with contiguous federally controlled tribal land.
- 3) If these parcels were to remain under the jurisdiction of the County of San Diego, they would be subject to the Public Resources Code, CCR Title 14 "SRA Fire Safe Regulations", the County Building Code and the County Consolidated Fire Code, which establish minimum fire safety standards for fire fighter emergency access and civilian evacuation, vegetation management in proximity to people and access, building resistance to wildfire ignition and water supply for firefighting, and related issues.
- 4) In this area, wildfire is a major on-going threat. According to County maps, in the last ninety years a major wildfire burned through this specific area in 1923, 1924 and 1942; making the native vegetation ("fuel") among the oldest in the County. Wildfires would be expected to be of extreme intensity due to density and age of the fuel.
- 5) Of the fire/life safety factors addressed by the local and state regulations identified above, the most critical fire and life safety issue on both sides of tribal boundaries is fire fighting access and emergency evacuation. Wildfire does not respect jurisdictional borders.
- 6) For the safety of all residents and firefighting crews, roads through the properties and through the reservation, in addition to Pala Temecula Road, should be established to

legally and reliably accommodate emergency access and evacuation for the benefit of all tribal and non-tribal land occupants.

C) Impacts to Federal and State Permits for Connectivity and Protected Habitat

The County has been working with the DOI, U.S. Fish and Wildlife Service (USFWS) and California Department of Fish and Game for an extended period of time to develop a multiple species Habitat Conservation Plan (HCP) for the northern region of the County. The property is within the County's draft North County Plan area. The proposed transfer of these parcels of land into trust and removing the County's jurisdiction over the land has the potential to impact the success of this plan. Development and implementation of these plans will result in the protection of listed and unlisted endangered and threatened species of plants and animals, and endangered habitats. San Diego County is an internationally-recognized "hotspot" of biodiversity and it is a major hot spot for species endangerment. The climatic, geographic, and geologic features support the greatest diversity of any county in the contiguous United States, making it more diverse than some entire states. This diversity is threatened by rapid urbanization and associated habitat loss.

The regional planning efforts work together to conserve a system of preserves that conserve core areas of habitat and linkages between them. The plans are multiple species HCPs pursuant to Section 10(a)(1)(B) of the federal Endangered Species Act (ESA), as well as Natural Community Conservation Plan (NCCPs) under the California Natural Community Conservation Planning Act (NCCPA), that provide the permits and authorizations for the Incidental Take of listed threatened, endangered, and/or other species of concern.

For additional information and for maps showing the location of the PAMA and the City's proposed preserve system, see the Draft North County Plan at <http://www.sdcounty.ca.gov/dplu/mscp/nc.html>.

4. If subject to zoning, how the intended use is consistent, or inconsistent, with current zoning.

Given the uncertainty of possible future uses of the property, the County cannot determine if the intended use is consistent with the County General Plan and Zoning Regulations. There is no reason the Pala Band must remove the property from the County jurisdiction to keep it undeveloped. However, the uses that would be consistent with the General Plan and zoning are identified below.

On August 3, 2011, the County Board of Supervisors adopted the General Plan Update, which is a comprehensive update to the General Plan that applies to all unincorporated areas within San Diego County. The Update also included changes to the Zoning Ordinance and Community and Subregional Plans. This review of the proposed action to move the three parcels totaling 345 acres to trust is based on the General Plan Update, as adopted on August 3, 2011.

A) General Plan

Under the General Plan, the three parcels are located in the Rural Lands Regional Category. The Rural Lands category is applied to large open space and very-low-density private and publicly owned lands that provide for agriculture, managed resource production, conservation, and recreation and thereby retain the rural character for which much of the unincorporated County is known. Rural areas are not appropriate for intensive residential or commercial uses due to significant topographical or environmental constraints, limited access, and the lack of public services or facilities.

The Rural Lands 40 designation allows for one single family dwelling unit per 40 acres. The densities are intended to reflect and preserve the rural agricultural, environmentally constrained, and natural "backcountry" areas of the County. Residential development within the Rural Lands category is typically not served by either municipal water and or municipal sewer systems.

B) Zoning

Current zoning for the three parcels are A70 (Limited Agriculture). The A70 Use Regulations are intended to create and preserve areas intended primarily for agricultural crop production. Additionally, a limited number of small farm animals may be kept and agricultural products raised on the premises may be processed. Typically, the A70 Use Regulations would be applied to areas throughout the County to protect moderate to high quality agricultural land.

The following are permitted uses under the A70 zone:

- Single family residential uses at a density of one dwelling unit per forty acres
- Essential Services, including:
 - Cellular telephone repeater facilities for motorist aid call box systems
 - County facilities used exclusively for Public Safety Emergency Radio
 - Electrical distribution lines and poles (including high tension)
 - Gas distribution lines
 - Open Space as a passive use
 - Parks, public (passive use only)
 - Sewerage collection lines
 - Storm drainage collection lines
 - Telephone distribution lines and poles
 - Water distribution lines
 - Railroad tracks, signals and movement of rolling stock
- Fire Protection Services
- Agricultural uses, including all types of horticulture, tree crops, row and field crops, limited packing and processing.

Additional uses would be allowed under certain circumstances, as specified in the Zoning Ordinance (refer to attached excerpt from the Zoning Ordinance).

C) Community Plan

The three parcels are located in the Pala/Pauma Subregion. This Subregional Plan focuses on the preservation of biological resources. The subject parcels are included as preapproved mitigation area (PAMA) in the draft North County MSCP.

D) Groundwater

- 1) The three parcels are underlain by a fractured rock aquifer that likely has only marginal groundwater resources that could be utilized. It is unlikely that the groundwater beneath these parcels would be a location for the reservation to seek out additional water resources for their water needs for future water-intensive uses at the reservation.
- 2) If this parcel were developed under County regulations, it would be subject to the San Diego County Groundwater Ordinance and the County Guidelines for Determining Significance – Groundwater Resources. If developed into residential parcels on private wells, the Groundwater Ordinance would require a minimum lot size of at least five acres per dwelling unit. Due to the low production capacities of wells within fractured rock aquifers in steep slope areas, larger parcel sizes could possibly be required.
- 3) The closest private well user is approximately 2,000 feet from the developable portion of the northern parcel. If anything other than low density residential is proposed in this area, well interference analysis should be conducted to evaluate potential impacts on the nearest well user before commencement of pumping groundwater from this area.

E) Flood Control

Based on the proposed use to remain undeveloped, there are no floodplain management requirements at this time as the area is currently an unmapped area of the floodplain zones under FEMA. However, as a major tributary of the San Luis Rey River, the Pala Creek has crossover flows that traverse the entire proposed acquisition area from the north boundary to the south boundary with a length of approximately two miles. Therefore, any future developments along the Pala Creek would impact the Pala Creek floodplain and the San Luis Rey River.

F) Hydrology and Water Quality

Pala Creek runs through the property proposed to be moved to trust. If the land is developed it may generate offsite impacts to adjacent County lands and into Pala Creek. It is important that the significance criteria listed below is followed for any development within the Pala FTT property. The criteria are based on the CEQA Checklist in Appendix G to the CEQA Guidelines (14 CCR 15000 et seq.).

Water resource impacts would be considered significant if the property were to:

- Violate any water quality standards or waste discharge requirements, create new sources of polluted runoff, or otherwise substantially degrade water quality.
- Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted).
- Place within a watercourse or 100-year flood hazard area structures which would impede or redirect flood flows, or otherwise substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner which would result in substantial erosion or siltation on site/off site.
- Substantially increase the rate or amount of surface runoff in a manner which would result in flooding on site/off site, or otherwise create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems.
- Result in or is subject to damage from inundation by mudflow.
- Result in substantial erosion or the loss of topsoil.
- Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map, including County floodplain maps.
- Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam.

Any development of the property, if within the County jurisdiction would be required to follow County Ordinances and Design Manuals in order to address offsite impacts into adjacent County lands in regards to Hydrology and Water Quality:

- County of San Diego Watershed Protection, Stormwater Management, and Discharge Control Ordinance (WPO), Ordinance 10096 (N.S.), December, 2010.
- County of San Diego Resource Protection Ordinance (RPO), Ordinance 9842 (N.S.), March, 2007
- County of San Diego Standard Urban Stormwater Mitigation Plan (SUSMP), January, 2011
- Final Hydromodification Management Plan (HMP) for County of San Diego, January, 2011
- San Diego County Hydrology Manual, June, 2003
- San Diego County Drainage Design Manual, July, 2005

G) Public Health

Additional information on future proposed development is needed to determine impacts of the proposed acquisition. Based on the stated use of the property to remain undeveloped, the property must be safeguarded.

- 1) Any existing water wells (at least one is shown to exist on the northern most parcel: 109-371-04) should conform to or exceed the standards set forth by the State of

California Water Well Standards (Bulletin 74-81 and 74-90). Wells that are abandoned or that do not conform to these standards should be destroyed in a manner that conforms to or exceeds the standards previously mentioned.

- 2) The adobe structure that exists on the property most likely has some type of onsite wastewater disposal system that should be properly destroyed/abandoned if it is no longer planned for use. Any existing septic tanks and/or seepage pits should be pumped clean by and properly backfilled to prevent any future collapse or subsidence. Wastes pumped from the tank and/or seepage pit should be disposed of to a proper waste treatment facility.
- 3) Use of any existing water well(s) as a potable water sources should involve an evaluation of the well(s) construction and condition. The water provided by the well should also be tested for compliance with potable water standards to ensure that it is safe for consumption.
- 4) Any hazardous wastes that exist on the property should be disposed of in accordance with the applicable federal guidelines/standards. Vacant parcels are subjected to illegal dumping of trash and debris that may contain hazardous waste items. It is recommended that a survey of the property be completed to evaluate if such wastes are present.

H) Air Quality

Additional information on future proposed development is needed to determine impacts of the proposed acquisition on air quality. If future uses were to occur on the parcels, an analysis should be prepared which includes the following:

- 1) Air Quality Analysis: An Air Quality Analysis report would provide qualitative and quantitative analysis of all air quality impacts related to all phases of the project.
- 2) Regional Air Quality Strategy (RAQS) and State Implementation Plan (SIP): An analysis of whether the project would conflict with or obstruct the implementation of the San Diego RAQS and/or applicable portions of the SIP.
- 3) Conformance to Federal and State Ambient Air Quality Standards: An analysis of whether the project would result in emissions that would violate any air quality standard or contribute substantially to an existing or projected air quality violation.
- 4) Cumulative Analysis: An analysis of whether the project would contribute to a cumulative increase in pollutants for which the San Diego Air Basin is listed as "non-attainment" for the State and Federal Ambient Air Quality Standards.
- 5) Health Risk Assessment (HRA): An analysis of whether there are any significant risks to sensitive receptors (residents, schools, hospitals, resident care facilities, or day-care centers) from the proposed project. The project description indicates that the site has been used for agricultural purposes. The HRA should also include an

analysis of whether the project would result in a significant health risk resulting from the disturbance of soils that may be contaminated from previous pesticide exposure.

- 6) Odor Assessment: An analysis of whether the project would either generate objectionable odors or place sensitive receptors next to existing objectionable odors, which could affect a considerable number of persons or the public.
- 7) Hot Spot Analysis: An analysis of whether the project would result in emissions of carbon monoxide that when totaled with the ambient concentrations would result in a carbon monoxide "hot spot".

I) Biological Resources

Any deviation from the stated use of keeping the property undeveloped may impact the regional planning efforts and habitat conservation efforts.

- 1) Based on a review of aerial photographs as well as the County of San Diego GIS mapping application, the project area appears to contain non-native grassland, southern mixed chaparral and coast live oak woodland. Impacts to sensitive habitats onsite should be avoided when possible. If impacts cannot be avoided, mitigation should be provided in accordance with the County of San Diego Guidelines for Determining Significance for Biological Resources.
- 2) Pala Creek runs through the project site in a north-south direction. This stream may qualify as a wetland under the Resource Protection Ordinance (RPO). All RPO wetlands should be avoided and preserved onsite and should contain wetland buffers of an appropriate size to protect the environmental and functional habitat values of the wetland (typically 50 to 200 feet).
- 3) Prior to any habitat impacts, surveys should be completed to detect the presence or absence of sensitive, rare and endangered plant and animal species on the project site. Should any of the following sensitive species be detected onsite (see table below), measures should be taken to avoid or mitigate impacts to listed species.

Plant	Animal	Latin Name	Common Name	Directed Survey Required
X		<i>Arctostaphylos rainbowensis</i>	Rainbow Manzanita	X
X		<i>Brodiaea orcuttii</i>	Orcutt's brodiaea	X
X		<i>Chorizanthe procumbens</i>	Prostrate spineflower	X
X		<i>Clarkia delicate</i>	Campo clarkia	X
X		<i>Harpagonella palmeri</i>	Palmer's grappling hook	
X		<i>Juncus acutus leopoldii</i>	Soutwestern spiny rush	
X		<i>Lepidium virginicum robinsonii</i>	Robinson pepper grass	X
X		<i>Nolina cismontane</i>	Chapparal beargrass	X

X		<i>Ophioglossum californicum</i>	California adder's tongue fern	
X		<i>Pentachaeta aurea</i>	Golden-rayed pentachaeta	
X		<i>Piperia leptopetala</i>	Narrow-petaled rein orchid	
X		<i>Quercus engelmannii</i>	Engelmann oak	
	X	<i>Accipiter cooperi</i>	Cooper's hawk	X
	X	<i>Accipiter striatus</i>	Sharp-shinned hawk	X
	X	<i>Ammodramus savannarum</i>	Grasshopper sparrow	X
	X	<i>Amphispiza belli belli</i>	Bell's sage sparrow	X
	X	<i>Anniella pulchra pulchra</i>	Silvery legless lizard	
	X	<i>Antrozous pallidus</i>	Pallid bat	
	X	<i>Aquila chrysaetos</i>	Golden eagle	X
	X	<i>Ardea Herodias</i>	Great blue heron	
	X	<i>Bassariscus astutus</i>	Ringtail	
	X	<i>Bufo microscaphus californicus</i>	Arroyo toad	X
	X	<i>Buteo lineatus</i>	Red-shouldered hawk	X
	X	<i>Cathartes aura</i>	Turkey vulture	X
	X	<i>Chaetodipus californicus femoralis</i>	Dulzura California pocket mouse	
	X	<i>Chaetodipus fallax fallax</i>	Northwestern San Diego pocket mouse	
	X	<i>Charina trivirgata roseofusca</i>	Coastal rosy boa	
	X	<i>Circus cyaneus hudsonius</i>	Northern harrier	X
	X	<i>Cnemidophorus hyperythrus</i>	Orange-throated whiptail	X
	X	<i>Cnemidophorus tigris multiscutatus</i>	Coastal western whiptail	
	X	<i>Coleonyx variegatus abbottii</i>	San Diego banded gecko	X
	X	<i>Corynorhinus townsendii</i>	Townsend's big-eared bat	
	X	<i>Crotalus ruber ruber</i>	Northern red diamond rattlesnake	
	X	<i>Danaus plexippus</i>	Monarch butterfly	
	X	<i>Diadophis punctatus similis</i>	San Diego ringneck snake	
	X	<i>Dipodomys stephensi</i>	Stephen's kangaroo rat	X
	X	<i>Elanus caeruleus</i>	Black-shouldered kite	X
	X	<i>Eremophila alpestris actis</i>	Horned lark	
	X	<i>Eumops perotis californicus</i>	Greater western mastiff bat	
	X	<i>Euphydryas editha quino</i>	Quino checkerspot butterfly	X
	X	<i>Falco mexicanus</i>	Prairie falcon	X
	X	<i>Felis concolor</i>	Mountain lion	
	X	<i>Lanius ludovicianus</i>	Loggerhead shrike	X
	X	<i>Larus californicus</i>	California gull (Non-breeding)	
	X	<i>Lasiurus blossevillii</i>	Western red bat	
	X	<i>Lepus californicus bennettii</i>	San Diego black-tailed jackrabbit	
	X	<i>Macrotus californicus</i>	California leaf-nosed bat	
	X	<i>Myotis ciliolabrum</i>	Small-footed myotis	
	X	<i>Myotis yumanensis</i>	Yuma myotis	
	X	<i>Neotoma lepida intermedia</i>	San Diego desert woodrat	
	X	<i>Nyctinomops macrotis</i>	Big free-tailed bat	
	X	<i>Nyctinomops femorosaccus</i>	Pocketed free-tailed bat	
	X	<i>Odocoileus hemionus</i>	Southern mule deer	
	X	<i>Onychomys torridus Ramona</i>	Southern grasshopper mouse	

X	<i>Perognathus longimembris brevinasus</i>	Los Angeles little pocket mouse
X	<i>Phrynosoma coronatum blainvillei</i>	San Diego horned lizard
X	<i>Salvadora hexalepis virgultea</i>	Coast patch-nosed snake
X	<i>Scaphiopus hammondii</i>	Western spadefoot toad
X	<i>Sialia Mexicana</i>	Western bluebird
X	<i>Taxidea taxus</i>	American badger
X	<i>Tyto alba</i>	Common barn-owl

- 4) A focused survey or site assessment should be completed for the following rare and endangered species: *Quino checkerspot butterfly*, *Arroyo toad* and *Stephen's kangaroo rat*. The focused surveys must be done by biologists with demonstrable knowledge in field detection of the subject species (focused surveys for Federally listed species shall be in compliance with USFWS protocol, when such protocol exists, and must be done by a USFWS permitted biologist -- contact the USFWS at (760) 431-9440).
- 5) The proposed FTT property is within the County's draft North County Plan area. The North County Plan is a multiple species HCP and a California NCCP plan that will provide protections for approximately 83 species while allowing reasonable development. With the FTT transfer, 345 acres of land would be removed from the North County Plan area. Though important to the overall preservation of habitat in the North County area, transfer of this land from fee to trust would not jeopardize the County's creation of a functional preserve system on the unincorporated land in the northern part of the County, but could cause local impacts to particular populations of some of the species that would be covered by the plan and to localized wildlife movement.
- 6) The arroyo toad critical habitat on Pala Creek should be preserved and protected from development and other impacts. Pala Creek, a tributary to the San Luis Rey River, has high quality habitat for the federally listed arroyo toad (*Anaxyrus californicus*). An estimated 75 percent of the historical habitat of the arroyo toad has been destroyed and many of the remaining populations are threatened with extinction.

Approximately 100 acres of Pala Creek and associated upland habitat on the proposed FTT property has been designated by the Secretary of the Interior as arroyo toad critical habitat (part of critical habitat Unit 14). When revised critical habitat was designated in Spring 2011, the Secretary of the Interior excluded 2,733 acres of tribal lands in Unit 14. The arroyo toad habitat in Pala Creek south of the FTT property is on the Pala Band of Mission Indians reservation and was excluded from critical habitat designation. When critical habitat for arroyo toad is next revised, the portion of Pala Creek on the FTT property would likely also be excluded, if it has been transferred from fee to trust.

- 7) The arroyo toad is covered by the draft North County Plan. With the FTT, North County Plan protections for the arroyo toad along the portion of Pala Creek on the property would be lost. The wetland and upland arroyo toad habitat on Pala Creek should be preserved and protected from development and other impacts.

- 8) The County's Mt. Olympus Preserve, a preserve for sensitive species such as the *Rainbow manzanita* (*Arctostaphylos rainbowensis*) and for its value as a linkage and corridor for animals, including large animals such as deer, mountain lion, coyote and bobcat, is adjacent to the proposed FTT parcels. If the land between the Preserve and Pala Creek is developed, movement of wildlife from the Preserve to Pala Creek could be impeded. The habitat connection between Mt. Olympus Preserve and Pala Creek should be preserved.
- 9) Several sensitive species that would be covered by the North County Plan could occur on the property. By removing this land from the North County Plan area, these species would lose the protections afforded to them by the County's plan. These species should be preserved on the property, or if impacted, appropriately mitigated.

J) Agriculture

- 1) According to the County Geographic Information System (GIS), the subject property contains land designated as Farmland of Local Importance. As such, it is considered an agricultural resource as described in the County of San Diego Guidelines for Determining Significance for Agricultural Resources (2007). Although it appears there is no existing agricultural operation on site, the Farmland of Local Importance designation indicates the possibility that an agricultural operation existed on the property at some point. Therefore, a Local Agricultural Resource Assessment model should be completed to determine the importance of the agricultural resources, and mitigation measures would be needed should the proposed development result in direct and/or indirect impact to the agricultural resources onsite and/or offsite.
- 2) If historical agricultural operation is identified, then an analysis should be completed to address the use of fertilizers, pesticides, and petroleum-based products in conjunction with the historical agricultural operation. The use of these substances may have left residual chemicals in the soils. A Phase I and partial Phase II Environmental Site Assessment should be conducted to identify the effects of the land, of using such products, assuming the historical agricultural operation did not employ 100 percent organic farming techniques.

K) Noise

- 1) County Code Noise Ordinance
Given the uncertainty of future uses, County staff cannot determine if the intended use is consistent with the current County Code Noise Ordinance. Parcels zoned A70 would typically be subject to the most restrictive one-hour average daytime sound level limit of 50 dBA (decibel A-weighted) and nighttime sound level limit of 45 dBA pursuant to the County Code Noise Ordinance, Section 36.404.

Projects within the County jurisdiction would be required to comply with these sound level requirements, regardless of what uses are proposed on site. Any use of construction equipment on site would typically be subject to an eight (8) hour

average 75 dBA sound level limit at the project property line where an existing occupied structure is located. Projects within the jurisdiction of the County of San Diego would be required to meet the sound level limits for temporary construction equipment operations pursuant to the County Code Noise Ordinance, Section 36.409.

2) County of San Diego Noise Element

Given the uncertainty of future uses, County staff cannot determine if the intended use is consistent with the current *County of San Diego Noise Element, Policy 4b*. Proposed uses that involve permanent additional noise sources would typically be subject to an offsite direct and cumulative noise evaluation.

Additional project related noise sources (such as additional vehicular traffic) within jurisdiction of the County would require supporting information that project related noise sources do not result in offsite direct and/or cumulative noise impacts to existing noise sensitive receptors pursuant to the County Noise Element, Policy 4b and the County Noise Guidelines. Proposed noise sensitive land uses would typically be subject to a noise exposure limit specified within the County Noise Element. Existing and proposed sensitive receptors within the jurisdiction of the County would require additional supporting information that exterior noise level of 60 dBA CNEL (Community Noise Equivalent Level) and interior noise level of 45 dB are met at these noise sensitive receptors.

L) Visual Resources

The project falls within the County of San Diego's Zone A Lighting Regulations for its proximity to the Palomar Observatory, according to current ordinances and regulations (*County of San Diego Light Pollution Code Sec. 59.101, County of San Diego Zoning Ordinance Section 6320 6322 and 6324, Title 24 (state), and San Diego County General Plan, Conservation Element*).

Zone A is defined as the circular area, fifteen (15) miles in radius centered on the Palomar Observatory and the circular area fifteen (15) miles in radius centered on the center of the Mount Laguna Observatory. The County mandates for Zone A Lighting are for fully shielded, low pressure sodium lamps, 4050 lumens or below for Class I lighting only.

Class I lighting means all outdoor lighting used for but not limited to outdoor sales or eating areas, assembly or repair areas, billboards and other signs, decorative effects, recreational facilities and other similar applications when color rendition is important. Lumens of 4050 or below are prohibited for Class II lighting which means all outdoor lighting used for but not limited to illumination for walkways, roadways, equipment yards, parking lots and outdoor security. The County also recommends that all lighting conform to the Pala-Pauma Subregional Plan.

The County opposes the expansion of tribal lands, and believes that the Pala Band's objectives for the property to remain vacant can be accomplished under existing land use jurisdiction. Further, cumulative fiscal impact of all proposed trust applications on the County and other local agencies should be analyzed and mitigated. The current application in combination with other applications has significant cumulative impacts that should be evaluated as part of any BIA application that proposes to acquire land currently under the jurisdiction of the County.

Thank you for the opportunity to comment on this application and for your consideration of the County's concerns. If you have any questions, please contact Teresa Brownyard, Tribal Liaison at (619) 685-2287.

Respectfully,



SARAH E. AGHASSI
Deputy Chief Administrative Officer

Attachment:

- Sections from the County of San Diego Zoning Ordinance

cc:

- Honorable Chairman Robert Smith, Pala Band of Mission Indians
- Honorable Dianne Feinstein, United States Senate
- Honorable Barbara Boxer, United States Senate
- Honorable Darrell Issa, United States House of Representatives
- Supervisor Bill Horn, Fifth Supervisorial District, County of San Diego
- Secretary Ken Salazar, U.S. Department of the Interior
- Assistant Secretary Larry Echo Hawk, Indian Affairs, U.S. Department of the Interior
- Director Michael S. Black, Bureau of Indian Affairs
- Superintendent Robert Eben, Southern California Agency, Bureau of Indian Affairs
- Mr. Jonathan Renner, Legal Affairs Secretary, Office of the Governor
- Mr. Jacob Appelsmith, Senior Advisor to the Governor, State Capitol
- Department of Justice, Office of the Attorney General, Attn. Peter Kaufman
- Edmund Pert, Regional Manager, California Department of Fish and Game (South Coast Region)
- Karen Goebel, Assistant Field Supervisor, U.S. Fish and Wildlife Service (Carlsbad Office)
- Dan Silver, MD, Executive Director, Endangered Habitats League (EHL)
- I-15 Corridor Design Review Board, 8975-315 Lawrence Welk Drive, Escondido, CA 92026
- Fallbrook Community Planning Group, 205 Calle Linda, Fallbrook, CA 92028
- Claudia Anzures, Chief Deputy County Counsel
- Richard Haas, Assistant Director, County Department of Planning and Land Use
- Teresa Brownyard, Tribal Liaison, County of San Diego

2700 AGRICULTURAL USE REGULATIONS

A70 LIMITED AGRICULTURAL USE REGULATIONS

2700 INTENT.

The provisions of Section 2700 through Section 2709 inclusive, shall be known as the A70 Limited Agricultural Use Regulations. The A70 Use Regulations are intended to create and preserve areas intended primarily for agricultural crop production. Additionally, a limited number of small farm animals may be kept and agricultural products raised on the premises may be processed. Typically, the A70 Use Regulations would be applied to areas throughout the County to protect moderate to high quality agricultural land.

2702 PERMITTED USES.

The following use types are permitted by the A70 Use Regulations:

- a. Residential Use Types.
 - Family Residential
- b. Civic Use Types.
 - Essential Services
 - Fire Protection Services (see Section 6905)
- c. Agricultural Use Types.
 - Horticulture (all types)
 - Tree Crops
 - Row and Field Crops
 - Packing and Processing: Limited

2703 PERMITTED USES SUBJECT TO LIMITATIONS.

The following use types are permitted by the A70 Use Regulations subject to the applicable provisions of Section 2980. The number in quotes following the use type refers to the subsection of Section 2980 which applies.

- a. Residential Use Types
 - Mobilehome Residential "18"
- b. Commercial Use Types
 - Animal Sales and Services: Veterinary (Large Animals) "6"
 - Animal Sales and Services: Veterinary (Small Animals) "6"
 - Recycling Collection Facility, Small "2"

Recycling Processing Facility, Wood and Green Materials "3"

c. Agricultural Use Types

Packing and Processing: Small Winery "22" (see Section 6910)

Packing and Processing: Boutique Winery "22" (see Section 6910)

Packing and Processing: Wholesale Limited Winery "22" (see Section 6910)

2704 USES SUBJECT TO A MINOR USE PERMIT.

The following use types are allowed by the A70 Use Regulations upon issuance of a Minor Use Permit.

a. Civic Use Types.

Law Enforcement Services

Minor Impact Utilities

Small Schools

b. Agricultural Use Types.

Farm Labor Camps

c. Commercial Use Types.

Cottage Industries "17" (see Section 6920)

2705 USES SUBJECT TO A MAJOR USE PERMIT.

The following use types are permitted by the A70 Use Regulations upon issuance of a Major Use Permit.

a. Residential Use Types.

Group Residential

b. Civic Use Types.

Administrative Services

Ambulance Services

Child Care Center

Civic, Fraternal or Religious Assembly

Clinic Services

Community Recreation

Cultural Exhibits and Library Services

Group Care

Major Impact Services and Utilities

Parking Services

Postal Services

c. Commercial Use Types.

Agricultural and Horticultural Sales (all types)

Explosive Storage (see Section 6904)

Participant Sports and Recreation: Outdoor

Transient Habitation: Campground (see Section 6450)

Transient Habitation: Resort (see Section 6400)

d. Agricultural Use Types.

Agricultural Equipment Storage

Packing and Processing: Winery

Packing and Processing: General

Packing and Processing: Support

e. Extractive Use Types.

Mining and Processing (see Section 6550)