



# United States Department of the Interior

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

AUG 12 2015

## NOTICE OF DECISION

CERTIFIED MAIL-RETURN RECEIPT REQUESTED – 7013 2630 0001 5557 5073

Honorable Randall Majel  
Chairman, Pauma Band of Luiseno Mission Indians  
P.O. Box 369  
Pauma Valley, CA 92061

Dear Chairman Majel:

This is our Notice of Decision for the application of the Pauma Band of Luiseno Mission Indians to have the below described property accepted by the United States of America in trust for the Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, California.

The land referred to herein is situated in the State of California, County of San Diego, and is described as follows:

Parcel 1: APN 131-060-25

That portion of the Pauma Rancho, in the County of San Diego, State of California, according to map thereof attached to the record of the Patent in Book 1, Page 67 of Patents, Records of San Diego County, described as follows:

Beginning at the most northerly corner of Block 2 of River Tract No. 1, according to Map thereof No. 1451, filed in the Office of the County Recorder of San Diego County, June 10, 1912; thence along the northeasterly prolongation of the northwesterly line of said Block 2, North 58° 15' 00" East 2970.00 feet to the most easterly corner of that parcel of land described in Deed to W. O. Lewis, et al, recorded April 28, 1947, as Document No. 44909 in Book 2392, Page 214 of Official Records being the TRUE POINT OF BEGINNING; thence along the northeasterly line of said land, North 31° 45' 00" West, 330.00 feet; thence North 58° 15' 00" East, 1040.00 feet to the southwesterly line of the land described in Parcel No. 1 of Deed to Howell N. Tyson and wife, recorded July 6, 1951, as document No. 83248 in Book 4160, Page 128 of Official Records; thence along said southwesterly line and the prolongation thereof South

31° 45' 00" East, 330.00 feet; thence South 58° 15' 00" West, 1040.00 feet to the true POINT OF BEGINNING.

PARCEL 2: APN 131-09-03

All that portion of Pauma Rancho, in the County of San Diego, State of California, according to Map thereof attached to the record of the Patent in Book 1, Page 67 of Patents, described as follows:

Beginning at the most northerly corner of a parcel of land conveyed by Title Insurance and Trust Company to Nellie S. Hayes, by Deed dated January 22, 1915 and recorded in Book 676, Page 129 of Deeds, Records of said County; thence North 31° 45' West 386 feet to a Point; thence South 58° 15' West 610 feet; thence South 31° 45' East 386 feet to a point in the northwesterly line of Hayes Land, distant thereon North 58° 15' EAST 710 feet from the most westerly corner thereof; thence North 58° 15' East along said northwesterly line, 610 feet to the POINT OF BEGINNING.

PARCEL 3: (Formerly APN 131-090-11, now APN(s): 131-090-02 and 131-090-09)

Parcel B of Certificate of Compliance Recorded February 27, 2004 as Instrument No. 2004-0157626, being all that real property conveyed in the Deeds to Verne F. Maynard and Joyce E. Maynard, Trustees of the Maynard 1984 Trust dated September 17, 1984, recorded July 11, 1991 as Doc #1991-0341001 and Doc #1991-0341003, also shown on Record of Survey No. 17438 in the Office of the Recorder of San Diego County, California, described below for clarity as follows:

Beginning at the most westerly corner conveyed by said Deeds; thence along the boundaries conveyed in said Deeds the following bearings and distances;

Thence North 58° 10' 14" East 709.74 feet;  
Thence South 31° 46' 29" East 386.21 feet;  
Thence North 58° 10' 52" East 139.52 feet;  
Thence South 31° 49' 08" East 773.02 feet;  
Thence South 39° 44' 29" West 193.47 feet;  
Thence South 84° 33' 45" West 195.76 feet;  
Thence North 32° 01' 07" West 747.24 feet;  
Thence South 58° 10' 52" West 338.00 feet;  
Thence North 31° 44' 08" West 250.00 feet;  
Thence South 58° 10' 52" West 150.00 feet;  
Thence North 31° 44' 08" West 136.08 feet to the POINT OF BEGINNING.

Excepting therefrom the following described property:

Beginning at the One Inch Steel Pipe designated #1 on Record of Survey Map No. 17438, filed June 21, 2002 in the Office of the Recorder of San Diego County;

1. Thence South 31° 49' 08" East 303.00 feet to the One Inch Steel Pipe designated #2;
2. Thence South 58° 10' 52" West 255.00 feet to the One Inch Steel Pipe designated #3;
3. Thence North 31° 49' 08" West 171 .50 feet to the One Inch Steel Pipe designated #4;
4. Thence South 58° 10' 52" West 75.27 feet to the One Inch Steel Pipe designated #5, being on the westerly boundary of said Deed;
5. Thence along said boundary North 32° 01' 07" West 131.50 feet the one Inch Steel Pipe designated #6, being on the westerly boundary of said Deed;
6. Thence leaving said boundary North 58° 10' 52" East 330.72 feet to the POINT OF BEGINNING.

The subject parcels, also known as the Maynard parcels, are located at 34410 Citricado Drive, Pauma Valley, California and contain 23.32 acres, more or less. This application qualifies as an "on-reservation" acquisition as the subject parcels are contiguous to the northwest boundary of the Pauma Indian Reservation and Pauma Reservation Road (BIA Highway P-36). The definition of "contiguous parcels" is two parcels of land having a common boundary notwithstanding the existence of non-navigable water or a public road or right-of-way, including parcels that touch at a point.

Federal Law authorizes the Secretary of the Interior, or his authorized representative, to acquire title on behalf of the United States of America for the benefit of tribes when such acquisition is authorized by an Act of Congress and (1) when such lands are within the consolidation area; or (2) when the tribe already owns an interest in the land; or (3) when the Secretary determines that the land is necessary to facilitate tribal self-determination, economic development, or tribal housing. In this particular instance, the authorizing Act of Congress is the Indian Land Consolidation of 1983 (25 U.S.C. § 2202). The applicable regulations are set forth in the Code of Federal Regulations (CFR), Title 25, INDIANS, Part 151, as amended. This land acquisition falls within the land acquisition policy as set forth by the Secretary of the Interior.

The Pauma and Yuima Reservation was established by the Act of January 12, 1891 (26 Stat. 712) as amended by the Act of March 1, 1907 (34 Stat. 1015).

Pursuant to 25 U.S.C. § 478, the Secretary held such an election for the Tribe on December 15, 1934, at which the majority of the Tribe's voters voted to reject the provisions of the Indian Reorganization Act of June 18, 1934. The Secretary's act of calling and holding this election for the Tribe informs us that the Tribe was deemed to be "under Federal jurisdiction" in 1934. The Haas List tribes are considered to be under federal jurisdiction in 1934, *See, Shawano County, Wisconsin v. Acting Midwest Regional Director, BIA, 53 IBIA 62 (February 28, 2011) and Stand Up for California, et al, v. U.S. Department of Interior v. North Fork Rancheria of Mono Indians, 919 F. Supp. 2d 51 (January 29, 2013), the District Court for District of Columbia.*

On January 22, 2015 by certified mail, return receipt requested, we issued notice of and sought comments regarding the proposed fee-to-trust application from the California State Clearinghouse, Office of Planning and Research; Daniel Powell, Legal Affairs Secretary, Office of the Governor; Sara Drake, Deputy Attorney General, State of California; Office of the Honorable Senator Diane Feinstein; San Diego County Assessor; San Diego County Treasurer and Tax Collector; San Diego County Board of Supervisors; San Diego County Sheriff's

Department; San Diego County Planning and Development Services; San Diego County Land Use and Environment Group; Barona Group of Capitan Grande Band; Campo Band of Mission Indians; Ewiiapaayp Band of Kumeyaay Indians; Inaja-Cosmit Band of Mission Indians; Jamul Indian Village; La Jolla Band of Luiseno Indians; La Posta Band of Mission Indians; Los Coyotes Band of Cahuilla & Cupeno Indians; Manzanita Band of Mission Indians; Mesa Grande Band of Mission Indians; Pala Band of Mission Indians; Rincon Band of Mission Indians; Santa Ysabel Band of Mission Indians; Sycuan Band of Mission Indians; San Pasqual Band of Mission Indians and the Viejas Band of Mission Indians. Regular Mail: Superintendent, Southern California Agency.

In response to our notification, we received the following comments:

**1. Letter dated 2/4/2015 from Robert Graziano of Pauma Valley, CA in which he is opposing this application and is providing the following comments:**

- This proposal requires a full Environmental Impact Statement as one of the parcels is...contiguous to the reservation and...may meet the legal threshold of gaming eligible consistent with the exceptions in the Indian Gaming Regulatory Act.
- The annual amount of property taxes currently levied on the subject property approximately \$11,611.30 is allocated to the County of San Diego...loss of this property tax over time will significantly affect the services provided by the County of San Diego to the non-Indian community and school district.
- The Notice of Application details a number of easements belonging to water districts and San Diego Gas and Electric Company...loss of access to infrastructure by these companies would present significant impacts on the community. The Regional Director...must require the elimination of all liens, encumbrances or infirmities prior to taking final approval action on this fee to trust acquisition.
- Transferring this land into trust without contacting easement owners represents a “taking or inverse condemnation” without due process or just compensation. This requires the fee to trust process to include a full environment impact statement.
- Governmental services such as law enforcement, fire and emergency services are also provided for by the tax dollars on property. Loss of these tax dollars while seemingly insignificant for one year over time will have a significant impact on citizen tax payers of the area and the county as a whole.
- It is without dispute that California’s criminal law is fully enforceable in Indian Country...However, there is no authority for enforcement of civil regulatory law and no manner in which non-tribal citizens can resolve unfortunate disputes over well water interference, or other potential problems that may arise on trust lands that affect non-tribal trust lands. Tribal governments are immune to civil liability.
- Transferring this land “into trust” removes it from the governance of the San Diego County Planning Commission and defined zoning. This very fact will significantly disrupt the character of the community since zoning from one parcel to another will be dramatically different.
- There is no immediate need or necessity as required in 25 CFR 151.10. This appears to be a desire to “bank land” with the actual need for the protections afforded tribes by trust status – an exemption from taxation and local and state environmental laws. The Tribe

has stated that it may use the land in the future for a residential development. Once land is in trust, the tribe may change the intended use of the land.

- Pauma Valley is one of the last agricultural valleys in Southern California, and the San Diego County General Plan has designated much of the region as SR-10 which limits the number of dwelling units to 10 acre parcels. This is specifically designed to curtail high density development. Lands in trust do not have to follow this guideline. The three parcels would intrude on the neighboring community and create an “island of no zoning code”, within a community with a strict zoning code to minimize residential development.
- It should be noted that only Parcel 131-090-11-00 is adjacent to tribal lands. But stating that it is contiguous while be separated by a major county road servicing the community along Adams Dr. and Citricado Dr. is a stretch of the classification of contiguous for the sake of extending lands within Pauma’s sovereign land. The use of the word contiguous raises a red flag in that lands contiguous to established reservation lands are eligible for gaming under the exceptions in the Indian Gaming Regulatory Act. Therefore, this fee to trust application requires a full Environmental Impact Statement.

Form letters from the individuals identified below were included as attachments to Mr. Graziano’s letter which includes the following statement: “I have read the attached 5 page letter by Robert Graziano dated February 4, 2015 regarding the conversion of parcels 131-060-25, 131-090-03, and 131-090-11 from Fee Simple to Trust. I wholeheartedly support the positions taken in the letter by Mr. Graziano and want to emphasize my concern for keeping this area of Pauma Valley semi-rural to rural. I strongly ask that this Applicant’s request be denied.”

- Letter dated 2/2/2015 from Donna and Patrick Duggan, Pauma Valley, CA
- Letter dated 2/15/2015 from Fausto Miguel Gutierrez, Pauma, Valley, CA
- Letter dated 2/16/015 from Irene and Alfred Savard, Pauma Valley, CA
- Letter dated 2/14/2015 from Dave A. Phillips, Pauma Valley, CA
- Letter dated 2/15/2015 from Elizabeth and Jesse Solis, Pauma Valley, CA
- Letter dated 2/15/2015 from Juan Aguilera, Pauma Valley, CA
- Letter dated 2/15/2015 from Myoung Ja Kim, Pauma Valley, CA
- Letter dated 2/15/2015 from Henry Mendez, Pauma Valley, CA
- Letter dated 2/16/2015 from Daren House, Pauma Valley, CA
- Letter dated 2/16/2015 from Ronald M. Williams, Pauma Valley, CA
- Letter dated 2/16/2015 from Thomas L. Neubert, Pauma Valley, CA
- Letter dated 2/16/2015 from Rafael Larios, Pauma Valley, CA
- Letter dated 2/17/2015 from Ernest Navarro, Pauma Valley, CA
- Letter dated 2/17/2015 from Gustavo Zepada, Pauma Valley, CA

**2. Letter dated 2/4/2015 from Tim and Peggy Parys, Pauma Valley, CA stating their opposition to the transfer of these parcels from fee simple to trust as follows:**

- The area is so peaceful and quiet due to the minimal number of housing in the area. We feel the proposed change would have a significant negative impact on all that we love about this area. Please consider denying the request to covert the subject parcels

from fee simple to trust and allow this community to maintain the current rural feel and unique quietness of this agricultural community.

3. **Letter dated 2/5/2015 from Ernest J. Dronenburg, Jr., San Diego County Assessor stating the total taxes for the 2014-2015 tax roll is \$11,800.44.**
4. **Letter dated 2/7/2015 from the Native American Heritage Commission stating that the commission has no comments regarding the cultural resources impact of this proposal.**
5. **Letter dated 2/10/2015 from Pierre and Lulu Mazonod, Rancho Dominguez, CA stating that they oppose the transfer of the parcels from fee simple to trust for the reasons as follows:**
  - San Diego County's General Plan has designated much of the region as SR-10 which limits the number of dwelling units to 1 per 10 acre parcel. Lands in trust do not have to follow this guideline...Pauma Valley would eventually end up having pockets of numerous houses clustered, while the neighboring community must comply with the San Diego General Plan...
  - ...we would like to point out that parcel 131-090-11-00 is separated from the Tribal lands by a county road.
6. **Letter dated 2/11/2015 from Mary Peterman, Pauma Valley, who provided the following comments:**
  - Your future plans would have a huge impact on this area and would change the landscape in a negative way, forever.
7. **Letter dated 2/15/2015 from Carla Burrus, Pauma Valley, who opposes the transfer of 3 parcels in Pauma Valley from fee to trust and provided the following comments:**
  - ...if the three parcels are transferred from fee simple to trust the tribe will not voluntarily honor the area's semi-rural zoning regulations...the unique, cherished rural character of our neighborhood and Pauma Valley would be forever changed...tribe will have to follow San Diego County's zoning regulations.
  - I'd like to note that according to the Supreme Court case Match-E-Be-Nash-She-Wish Band of Pottawatomis Indians v. Patchak, the Supreme Court held that the interests of those neighbors affected by a fee to trust transfer, "whether economic, environmental, or aesthetic," come within the Indian Reorganization Act's regulatory scheme. The Supreme Court also held that the "Department's regulations make [the] statutory concern with land crystal clear." In particular, the regulations "require the Secretary to consider, in evaluating any acquisition, both '[t]he purpose for which the land will be used' and the 'potential conflicts of land use which may arise.'" §§151.10(c), 151.10(f), see §151.11(a).
  - One of the parcels falls within Rancho Estates Mutual Water Company service area – our community's private water company.

- ...multiple easements would be affected by a transfer. It is of great concern that I do not believe the tribe has properly notified any of these organizations as required by law.
- ...it is my hope that after the Secretary has the opportunity to **carefully review the tribe's plans for land use and all the resulting potential conflicts, transfer of title from fee to trust will be denied.**

**8. Letter dated February 26, 2015 from James G. Waian, Deputy Attorney General for Kamala D. Harris, Attorney General, Dept. of Justice, State of California with objections summarized as follows:**

- While the State is not opposed to the concept of trust acquisition for the purpose of Tribal housing and economic development, the State's comments are offered to ensure that the analytical process which supports a decision regarding trust acquisition complies with the requirements of federal law.
- The application cannot be approved as an on-reservation application because at least two of the parcels proposed for acquisition are not contiguous to the tribe's reservation and the application has failed to demonstrate compliance with the requirements for an off-reservation application...the application must be denied or, alternatively, the application must be amended to include a discussion demonstrating compliance with the requirements of 25 CFR § 151.11.

**9. Letter dated March 17, 2015 from Andrew Spurgin, Chief, Planning & Development Services with comments summarized as follows:**

- The County of San Diego has a longstanding policy opposing the expansion of tribal lands and Indian gaming activities without appropriate mitigation for resulting impacts. The County also retains policy to oppose efforts that impede local land use authority and maintain principles to be fiscally prudent.

Easements

- The County opposes the incorporation of any easements held by the County and other agencies into trust lands because it would constitute taking of public property.

Proposed Use

- The lack of identified anticipated future uses of the properties makes it difficult...to address environmental and planning impacts of the project...an Environmental Impact Statement (EIS) should be prepared that addresses the proposed uses for the site if the sites will be used for something other than housing. With these comments, and the comments from the Pala-Pauma Community Sponsor Group, the County would like responses on the ultimate use of the parcels and requests analysis by the Bureau of Indian Affairs and Pauma Band to look into these concerns and propose mechanisms to address and mitigate them.

Environmental Health

- All three of the properties have previous percolation testing and approved designs for the use of onsite wastewater treatment systems, to serve proposed residences. Future use of the property for residential use would be expected to follow established standards for the placement and design for any onsite wastewater treatment system.

- The existing residence is connected to an onsite wastewater treatment system...would be expected to be maintained and repairs as needed should the structures remain in use. In the event that the structures are removed or demolished, the existing septic tanks and/or seepage pits would need to be pumped and backfilled to prevent accidental collapse in the future.
- Current potable and non-potable water supplies to the property are unknown. Any wells located on the various parcels would be expected to be maintained to all applicable State of California standards. Any new wells would also be expected to meet all applicable standards.

#### Cultural Resources

- The subject property has been surveyed three times (Carrico 03-293, Croutham 08-19, Dallas 07-02) which were negative for cultural resources. However, there are cultural resources in the surrounding area. Any development of the property should include archaeological monitoring.

#### Fire Safety

- According to County's GIS mapping layers, the properties are currently within the Yuima Municipal Water District and the Mootamai Municipal Water District. If the mapping information is accurate, fire and Emergency Medical Services (EMS) funding through property taxes is not an issue. Inclusion into the Pauma Band of Luiseno Mission Indians reservation would presumably include providing fire and Emergency Medical Services (EMS) by the Tribe.
- ...the County has enjoyed a good partnership with the Pauma Reservation Fire Department and other Tribal fire departments. This has included some emergency coverage of the County areas surrounding reservations, both within and outside fire protection districts. Acknowledging existing mutual aid agreements, we encourage further formalization and expansion of that relationship through an agreement between the County and the Tribe to insure continuity of fire and emergency medical services to that area, for our mutual benefit. Reciprocal agreements should be formalized with the San Diego County Fire Authority.

The project is currently in designated "Wildland Urban Interface" area, and State Responsibility Area. It is ranked as a "Moderate" Fire Severity Zone as determined by CAL FIRE FRAP mapping.

It is important that the Tribe maintain the property and development in concert with recently developed and widely accepted construction, fuel management and water supply standards found in local, state and federal regulations. To the extent these safety priorities are maintained, safety of the residents and of guests to the reservation area will be protected to the extent considered by fire experts to be the current appropriate level for wildland fire areas.

#### Transportation & Traffic

- Pauma Reservation Road is the only public access roadway from State Route 76 to the parcels proposed for acquisition into trust and is publicly maintained. Any County easements and right to maintain the existing road, slope and/or drainage easements will remain with the County and not be transferred or affected by any land acquisition into trust.
- The parcels proposed for acquisition are contiguous with the current Pauma Reservation and are located near Casino Pauma. If the land is taken into trust, the



parcels would no longer be subject to County or State land use regulations and CEQA review...Expansion of existing and/or related uses could significantly increase traffic and may result in significant traffic impacts on State Route 76 and regional area roadways. Any future development on the parcel to expand the casino or related facilities should require that the Pauma Tribe enter into a cooperative agreement with the County of San Diego to mitigate off reservation impacts that would result from proposed development.

- 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 public roadways...without County jurisdiction over these parcels, the County would not have the authority to collect a TIF contribution 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. Access to the parcel is provided via Pauma Reservation Road. Vehicle trips from any development on the parcel may utilize area transportation facilities that are identified in the County's TIF program.

#### Watershed Protection Program

- When the land use changes take place on these parcels to develop Tribal residences and associated improvements in the future, the development/improvements may generate offsite storm water quality impacts into County lands, storm drain facilities, and receiving water. The project should consider integrating post-construction treatment control Best Management Practices (BMPs), Low Impact Development (LID), Source Control BMPs, Hydromodification management practices, and construction BMPs in accordance with the County of San Diego's Watershed Protection Ordinance and Grading Ordinance in an effort to minimize its storm water quality impacts to County land, storm drain facilities, and receiving waters.

#### Flood Control

- According to item 13, Schedule B – Section II of NOA document, there is a drainage easement as shown on Record of Survey (R.O.S.) 2618 Map for Parcel 1. DPW Flood Control staff has researched and reviewed R.O.S. 2618 map (see the enclosed map). There is no dedication or acceptance on the R.O.S., and it is not possible to dedicate and accept easements to an agency on a R.O.S. The road that the easement crosses is a private road, so the County would not have an issue with this drainage easement as we consider it a private matter. Other than that easement shown on the R.O.S. 2618, we did not find any other possible DPW Flood Control facilities.

#### Groundwater Resources

- The 3 parcels totaling 23.32 acres into trust for the Pauma Band if developed under current County regulations 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 5 acres per dwelling unit. 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.
- In September 2014, Governor Brown signed a three bill legislative package known as the Sustainable Groundwater Management Act of 2014. The San Luis Rey River

Basin was named in the legislation to require groundwater sustainability plan which will require entities within the basin to work collectively to develop a comprehensive long-term strategy to achieve long-term groundwater sustainability within the basin. The subject parcels lie within or near the boundaries of this basin.

Geology and Mineral Resources

- The subject parcels have been designated by the State as Mineral Resource Zone 2 (MRZ-2), which indicates the site has mineral resources that are of regional or statewide importance. Placement of improved uses such as residences on this land would preclude the land from being used as a surface mining operation. However, the site has nearby residences in very close proximity which would preclude the site from being developed as a surface mining operation due potential noise, air quality, and other potential impacts to the neighboring residential parcels.

Special Districts

- The proposed area is part of PRD 6 administered by Special Districts and will not be able to charge benefit assessments and may lose property tax revenue due to the PRD.

Assessor

- Parcel Nos: 131-060-25-00, 131-090-03-00, and 131-090-11-00, Combined size: 23.32 acres +/-, Combined Value: \$1,049,957

The County also incorporates by reference the **Pala-Pauma Community Sponsor Group (PPCSG)** comments on the proposed Fee-to-Trust application as follows:

At a public meeting held March 3, 2015, PPCSG had the opportunity of hearing comments from members of its community regarding the captioned proposal. The comments came from members of bands of Indians (speaking in favor of the proposed FTT) and individuals residing adjacent to the subject parcels (generally concerned about the impact upon their locale and environment were the land to be removed from a controlling influence of the County).

After considerable discussion, and in recognition of the interests of all parties and the need for the entirety of the community to compromise in harmony, and upon motion made and unanimously carried (6 in favor, none in opposition, 1 absent), PPCSG resolved that it supported the proposed FTT provided that without infringing upon the sovereign rights of the Pauma Band there could be assurances addressing the concerns expressed by the non-tribal community so that:

1. The density of the housing that the FTT application anticipates be developed be not materially greater than those of the land use designators presently assigned to the subject parcels.
2. Any land use other than specifically set forth in the FTT application be subject to a substantial environmental review comparable to a CEQA review.
3. All of the existing easements on and over the subject parcels continue to provide identical rights and benefits subsequent to any FTT as such easements now provide.
4. There be certainty that the identification of Pauma Reservation Road as a "Bureau of Indian Affairs road" [page 4 of the FTT application] could never result in free and unfettered public access and use being withdrawn or limited, especially with

regard to private property located both on local roads and beyond the present Pauma Band reservation.

5. The issues of water rights related to the subject parcels and the delivery of water to the subject parcels be resolved so that there is no diminution of entitlements of the water company presently enjoying such rights.
6. There be arrangements such that residents continuing pay PRD6 assessments not be disadvantaged by increased assessments as a result of any loss of any pro rata assessments now being paid in regard to the subject parcels.

**10. Letter dated March 20, 2015 from Al Savard, President, Rancho Estates Mutual Water Company (REMWC), Pauma Valley, CA with comments as follows:**

- ...in addition to easements for pipelines located on APN 131-060-25-00, this parcel is currently serviced by REMWC. REMWC has exclusive water rights on all its parcels, and is the sole entity, recognized by the State of California, which furnishes water (both domestic and agricultural) to parcels within its Service area. REMWC Articles of Incorporation clearly state that no Shareholder may import water for use within the REMWC Service Area.
- REMWC has no desire to have service to APN 131-060-25-00 depart from the district. APN 131-060-25-00 holds 7.66 shares of REMWC stock. Should APN 131-060-25-00 be transferred into trust, it will be taken out of the regulatory authority of the State, the County and the REMWC District.
- The Tribe may choose to retain these shares as well as the associated obligation of paying assessments, special assessments, fees, and all related costs as it has since REMWC's inception on May 25, 1951. While the exceptions in the application of the trust transfer provide that the documented easements will continue to run with the land, the document does not address the issue of water rights, including supply and delivery, or the associated payments related to APN 131-060-25-00 use of water. Many other jurisdictions have reached memorandums of understanding over similar civil regulatory issues which provide for continued services and assurance that all related fees will be paid.
- REMWC depends on the continued assessments and fees related to this property. A loss of these fees would have a significant impact on all remaining shareholders.

**Responses by the Pauma Band of Mission Indians in a letter dated May 14, 2015, to the above comments are as follows:**

**1. Pauma's response to comments from Andrew Spurgin, Chief Planning & Development Services, San Diego County – 3/17/15**

Prior to addressing several comments made by the County of San Diego (County), Pauma would like to address the County's incorporation of purported minutes/comments from a March 3, 2015 public meeting of the Pala Pauma Community Sponsor Group (PPCSG). While attending that March 3<sup>rd</sup> meeting, Chairman Majel participated in a discussion where Chairman Majel addressed various concerns shared by local members of the

community. After the conclusions of that discussion, Chairman Majel witnessed the PPCSG pass a motion in support of the Fee to Trust application for Maynard. However, the purported minutes/comments incorporated into the County's comments contain several conditions on the supporting motion that were not discussed when the motion was on the floor or was passed. Consequently, Chairman Majel had serious concerns that the purported comments/minutes did not represent what actually occurred at the March 3, meeting. In addition, Chairman Majel understood that any minutes of the PPCSG were approved at the next meeting of the PPCSG. Since there has been no public meeting of the PPCSG since March 3, 2015, Chairman Majel was at a loss to explain how such purported minutes, which are attached to the San Diego County's comments dated March 17, 2015, could have been properly and formerly approved by the PPCSG.

Based upon the foregoing, Chairman Majel sent Vice-Chairman, Temet Aguilar, to a public meeting of the PPCSG on May 5, 2015. At that meeting, the Board discussed the issue at length. Vice-Chair Aguilar observed that the PPCSG had not yet officially approved any minutes or comments from the March 3, 2015 meeting despite the fact that such purported minutes were incorporated into the County's comments. Furthermore, Vice-Chair Aguilar engaged in discussion with the PPCSG board members regarding the issue. Ultimately, the board members present decided to approve minutes that correctly stated the language contained in the motion, which was passed by the PPCSG at the March 3<sup>rd</sup> meeting. The language of such motion supports the Maynard fee to trust application, the only condition being that current easements on the Maynard parcels are not extinguished by the fee to trust transfer. Fortunately, this sole condition has been met because Pauma has passed a resolution accepting various title exceptions, including current easement, which will remain in place after the fee to trust transfer. However, the minutes from the March 3<sup>rd</sup> meeting do note several concerns raised in discussion at such meeting. Consequently, the PPCSG has provided support for the Maynard application while noting the concerns of the public that were discussed and addressed at that meeting by Chairman Majel. The corrected comments from the March 3<sup>rd</sup> meeting are attached at Exhibit 1.

- The County raised several issues some of which are separate and apart from those contained in invalid minutes/comments of the PPCSG and some of which are dependent on such invalid comments. The County begins its letter by stating: "The County of San Diego has a longstanding policy opposing expansion of tribal lands and Indian Gaming Activities without appropriate mitigation for resulting impacts."
- Pauma is not changing the use of the land and has no future plans to change the use of the land because of the need for housing...the planned use of this land does not include gaming. Accordingly, there is no need to address any impacts or mitigation.
- The County states that the use could change later and states the County would like statements on the "ultimate use" of such parcels. However, Pauma has already stated the ultimate use for the parcels is housing and agriculture.

Furthermore, rather than addressing the actual use provided by Pauma, the County goes on to request that the BIA and Pauma address issues created by hypothetical uses. Again, Pauma has no plans to change the use of the parcel, thus, there is no need for either Pauma or the BIA to address hypothetical changes.

- In addition, the County also relied on the invalid and incorrect comments from the PPCSG to support its request. As noted above, PPCSG passed a motion supporting

the trust acquisition of the Maynard parcels. This support was provided after a discussion involving Chairman Majel where Chairman Majel addressed the concerns of those present. Consequently, there is no request, explicit or implied, on the part of the PPCSG for the BIA or Pauma to address hypothetical uses...

- With respect to taxes, the County notes the amount of taxes paid per year for the parcels equals \$11,800.44. The BIA is already aware of this figure and has noted that such amount is not significant given the billions of dollars San Diego Collects in taxes per year. The County has not disputed BIA's position regarding taxes.
- The County states there "may" be loss of property taxes due to PRD 6 administered by Special Districts. Unfortunately, there is no way to determine from the County's statement if there is going to be an actual loss and whether such loss is in any way significant.
- With respect to fire safety, Pauma and the County have entered into mutual aid agreements that have allowed Pauma to provide fire protection inside and outside of the Reservation. The County requests the expansion of such agreement. Pauma welcomes any dialogue with the County that will better secure the safety and health of the peoples of Pauma Valley. However, such agreements should not be required and are not required under law for the Maynard parcels to be transferred into trust. Pauma and the County will continue to work together on issues of multijurisdictional importance. For possible future issues involving cultural resources, environmental health, transportation and traffic, water issues and mineral resources, Pauma and the County will continue to work together to address such issues in the future as in the past.

**2. Pauma's response to comments from Al Savard, President, Rancho Estates Mutual Water Company (REMWC), Pauma Valley, CA – 3/17/15**

- REMWC is primarily concerned that Pauma may not decide to keep its shares in REMWC and/or decide to stop receiving its water for the Maynard parcels from REMWC. At the present time, Pauma has no intention of ceasing its relationship with REMWC nor does it intend to cease receiving water from REMWC. REMWC has cited no legal authority as to why Pauma may not maintain its relationship with REMWC and Pauma has every intention to work with REMWC in order to continue to be good neighbors in the future. As noted in REMWC's comments, Pauma has acknowledged the easement exceptions for various utilities, including for water pipelines, on the Maynard parcels. REMWC has invited Pauma to attend its meetings and Pauma intends to send a representative to a REMWC meeting in the near future.

**3. Pauma's response to comments from James G. Waian, Deputy Attorney General, State of California, Department of Justice – 2/26/15**

- Although the California Attorney General's Office (AG) states that it recognizes the legitimate need for Tribes to obtain land and is respectful of the BIA's authority, the AG goes on to argue that at least two of the parcels that are part of the Maynard application should be evaluated as an "off-reservation" acquisition because such parcels are not contiguous to the Pauma Reservation.

The AG briefly mentions that the presence of a road means that no part of the Maynard application is contiguous. However, “the fact that a highway easement separates the actual land surfaces of the two parcels does not render them any less contiguous for purposes of Section 151.10.” *County of Sauk, Wisconsin v. Midwest Regional Director* (2007) 45 IBIA 201,208. Indeed, in this case the parcels aren’t even separated by a highway and subject to a high amount of public traffic. Rather, there is a road that actually provides immediate access to such parcels. Consequently, there is no barrier that would prevent such parcels from being fully integrated in the Pauma Reservation Community.

The main thrust of the AG’s letter is that all the parcels in the Maynard application do not touch a reservation boundary so at least those parcels not touching should be treated as “off-reservation” acquisitions. However, the AG’s position ignores the fact that all parcels in the Maynard application are contiguous and that, taken as unified unit of land, the Maynard parcels are contiguous to the reservation boundary.

The policy behind the distinction between “on-reservation” and off-reservation” acquisition is based upon the jurisdictional complications that arise due to distance between a particular parcel and a reservation. Generally, the farther from a reservation the land is, the greater the scrutiny the Secretary gives to the justification of anticipated benefits from the acquisition.

In the present case, the Maynard parcels will be completely contiguous to and part of the Pauma Reservation once the application is approved; there will be no separation. Consequently, any jurisdictional issues that arise will be too trivial to merit consideration and in no practical way implicate the policy considerations relating to “off-reservation” acquisitions.

Based upon the foregoing, Pauma believes that the Maynard application should continue to be treated as one unit of land that is contiguous to the Pauma Reservation.

**4. Tribe’s response to comments made by Pauma’s neighboring residents, Róbert Graziano (with supporting letters from Donna and Patrick Duggan, Fausto Miguel Guitierrez, Irene and Alfred Savard, Dave A. Phillips, Elizabeth and Jesse Solis, Juan Aguilera, Myoung Ja Kim, Henry Mendez, Darren House, Ronald M. Williams, Thomas L. Neubert, Rafael Larios, Ernest Navarro and Gustavo Zepeda); Tim and Peggy Parys, Pierre and Lulu Mazonod, Mary Peterman, and Carla Burrus are as follows:**

- With respect to tax and loss of revenue issues, see Pauma’s response to San Diego County’s comments at section 1, page 11-13.
- Pauma’s response to general comments regarding scenic nature of Pauma Valley is as follows:
  - ❖ To address the majority of comments made by Pauma’s neighbors Pauma believes it’s important to address some of Pauma’s history and current need for the Maynard Parcels...Since time immemorial Pauma’s Luiseno people lived off marine resources along the coast and vegetables gathered in the foothills of the Coast Range to the east...each village group also had its own food resource area

and thus, each village was responsible for cultivating its own food. By the late 19<sup>th</sup> century, the Pauma Luiseno had an established tradition of local horticulture and agriculture, which Pauma has continued up to the present day. Consequently, Pauma doesn't see agriculture as a purely economic enterprise; it regards agriculture as part of its cultural traditions.

- ❖ As stated in its application, Pauma has applied to take the Maynard Parcels into trust because Pauma needs the land. Currently, approximately 60% of Pauma's tribal members live off the reservation...the ability to acquire housing for Pauma's tribal members are limited by the amount of land contained in the current Pauma Reservation, far less than Pauma's traditional lands.
- ❖ Given the rural and agricultural traditions of Pauma, Pauma has typically housed its members in separate single family homes. Pauma has not engaged in the construction of apartments or large multifamily homes. Consequently, in order to provide more housing for its members and retain the current semi-rural nature of Pauma reservation, Pauma needs to increase its land base. The three contiguous Maynard parcels adjacent to the northwest boundary of the reservation contain producing citrus orchards, orchard equipment and one residence, which was inhabited by the Maynard family. The addition of the Maynard parcels will allow Pauma to increase the number of residences on the Pauma reservation while maintaining the semi-rural character of the area and to further Pauma's economic development through the continued cultivation of the citrus orchards.
- ❖ Pauma observed that the residents are concerned that placing the Maynard parcels into trust will have an adverse effect on the scenery and habitat contained in Pauma Valley. However, as Pauma has noted in its application, the use of the Maynard Parcels are not going to change. Since the residential and agricultural uses are going to continue as they have before there is no use that will be inconsistent with local zoning regulations and thus, no need for concern regarding any present uses or uses in the near future.
- ❖ Pauma also understands that there is a general apprehension about what may happen to the lands in the future. Although Pauma understands this general apprehension doesn't need to be addressed under the applicable regulations, Pauma would like to point out a few simple facts. First, Pauma has maintained a tradition of agriculture on its reservation long before other residents moved to Pauma Valley and Pauma will seek to protect that tradition as part of its economic development and cultural heritage for the foreseeable future. Second, Pauma is seeking this land to allow for more of its members to live on the Pauma Reservation without having to sacrifice the rural nature of its reservation. If Pauma cannot add land it will be required to add more houses in close proximity thereby diminishing the scenic character of Pauma Valley. Thus, transfer of the Maynard parcels into trust will actually serve to protect and sustain the scenic nature of Pauma Valley. Finally, Pauma has been recognized as a good neighbor in a letter from Al Savard, President, Rancho Estates Mutual Water Company, dated March 17, 2015. Consequently, Pauma is confident that in the future it will be able to continue its traditions while finding mutually agreeable solutions to issues that may arise between Pauma and its neighbors.

Pursuant to 25 CFR 151.10, the following factors were considered in formulating our decision: (1) the need of the tribe for additional land; (2) the purposes for which the land will be used; (3) impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls; (4) jurisdictional problems and potential conflicts of land use which may arise; (5) whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the acquisition of land in trust status; (6) the extent to which the applicant has provided information that allows the Secretary to comply with 516 DM 6, appendix 4, National Environmental Policy Act Revised Implementing Procedures, and 602 DM 2, Land Acquisitions; Hazardous Substances Determinations. Accordingly, the following analysis of the application is provided.

#### Factor 1 - Need for Additional Land

The Pauma Reservation and the Maynard parcels are located in north-central San Diego County within the San Luis Rey River Basin and Pauma Valley, south of Palomar Mountain and the Agua Tibia Mountain Range. The Pauma reservation is located approximately 9 miles northeast of Valley Center, California and approximately 40 miles from San Diego, California.

The Pauma Band, historically known as the Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, is one of six federally-recognized Indian tribes in Southern California who share the Luiseno Indian affiliation, language and traditions. The Pauma Band strives to preserve and strengthen its tribal sovereignty and self-determination through the promotion, protection and advancement of the cultural, political and economic well-being of its tribal members.

Acquisition of the subject parcels are needed to further support the tribe's self-determination, housing and economic development needs. Placement of this land in trust secures it against alienation, protects tribal investments and ensures the availability of land for governmental purposes:

#### Factor 2 - Proposed Land Use

The land is currently used for combined agricultural and residential purposes. The Tribe has no immediate plans for land use changes on the Maynard parcels. The Tribe foresees no future development on the land because: (1) it is not practical to develop the land for commercial use as this time; (2) the Tribe has not plans for commercial or other developments on this land and (3) the Tribe does not anticipate having available funds for developing this land. The Tribe anticipates funding support and maintenance only for the land's current agricultural and residential purposes because: (a) the Tribe's residential land base is extreme small, so more homes are needed; and (b) the Tribe intends to continue agricultural use in the future. If the Tribe decides to make improvements to the existing facilities in the future, the Tribe will conduct a thorough environmental analysis in compliance with the National Environmental Policy Act (NEPA) and tribal environmental laws. The parcels are not part of any Williamson Act restrictions or contracts.



### Factor 3 – Impact on State and Local Government’s Tax Base

Parcels accepted into federal trust status are exempt from taxation and would be removed from the County’s taxing jurisdiction. In the 2014-2015 tax years, the total tax assessed on the subject parcels was \$11,800.44. During the comment period, neighboring residents of Pauma Valley and the County of San Diego, Planning and Development Services indicated adverse impacts would result from the removal of the subject parcel from the tax rolls. The Tribe responded to the comments in letter dated May 14, 2015.

Transferring the subject property into trust will not have a significant impact on the State of California or San Diego County’s tax revenue because the amount of property taxes assessed on these parcels is small in comparison to the County’s annual property tax revenue.

The commercial activities (agriculture) on the property that are subject to taxation at the time of this application produce nominal tax revenues. Additionally, there is not lease income generated from the parcels. The County and State do not stand to lose significant revenue through sales tax collection, use tax, or franchise tax when the property is placed into trust status.

It is our determination that no significant impact will result from the removal of this property from the county tax rolls given the relatively small amount of tax revenue assessed on the subject parcels.

### Factor 4 - Jurisdictional Problems and Potential Conflicts of Land Use Which May Arise

The Tribe does not anticipate that any significant jurisdictional conflicts will occur as a result of transfer of the Maynard property into trust. During the comment period, neighboring residents of Pauma Valley, CA; Rancho Estates Mutual Water Company; and San Diego County, Planning and Development Services stated their concerns regarding the transfer of the Maynard parcels into trust status as referenced above. The Tribe’s response to comments is also included within the letter dated May 14, 2015.

The land presently is subject to the full civil/regulatory and criminal/prohibitory jurisdiction of the State of California and San Diego County. Once the land is accepted into trust and becomes part of the Reservation, the State of California will have the same territorial and adjudicatory jurisdiction over the land, persons and transactions on the land as the State has over other Indian counties within the State. Under 18 U.S.C. § 1162 and 28 U.S.C. § 1360 (P.L. 83-280), except as otherwise expressly provided in those statutes, the State of California would retain jurisdiction to enforce its criminal/prohibitory law against all persons and conduct occurring on the land.

The Tribe will no longer be bound by San Diego County’s zoning regulations with respect to the Maynard property, which will not present a problem as the Tribe has no plans to change the current use of the land.

Based on our analysis of the comments and the Tribe’s response to comments we have determined that there will be no additional impacts on the County or State, and that the economic and social benefits of the planned use of this property have been properly addressed.

Factor 5 - Whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status

Acceptance of the acquired land into Federal trust status should not impose any additional responsibilities or burdens on the BIA beyond those already inherent in the Federal trusteeship over the existing Pauma Reservation. The Tribe will ensure that all essential services – security, fire protection, education, natural resource protections, etc. – are provided to the property using existing federal allocations and/or profits from the Tribe’s economic enterprises. This acquisition anticipates no change in land use; and therefore, any additional responsibilities resulting from this transaction will be minimal.

Factor 6 – The extent to which the applicant has provided information that allows the Secretary to comply with 516 DM 1-7, National Environmental Policy Act Revised Implementing Procedures, and 602 DM 2, Land Acquisitions: Hazardous Substances Determination

In accordance with Interior Department Policy (602 DM 2), we are charged with the responsibility of conducting a site assessment for the purposes of determining the potential of, and extent of liability from hazardous substances or other environmental remediation or injury. The record includes a negative Phase 1 “Contaminant Survey Checklist” dated February 10, 2011, reflecting that there were no hazardous materials or contaminants.

National Environmental Policy Act Compliance

An additional requirement that has to be met when considering land acquisition proposals is the impact upon the human environment pursuant to the criteria of the National Environmental Policy Act of 1969 (NEPA). The BIA’s guidelines for NEPA compliance are set forth in the Bureau of Indian Affairs Manual (59 IAM). The proposed action herein has been determined not to require the preparation of either an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). A Categorical Exclusion requires a qualifying action in this case, 516 DM 10.5I, Land Conveyance and Other Transfers, where no immediate change in land use is planned. A Categorical Exclusion for the acquisition for the subject property was approved by this Agency on February 11, 2011, and compliance with NEPA has been completed.

Conclusion

Based on the foregoing, we at this time issue notice of our intent to accept the subject real property into trust. The subject acquisition will vest title in the United States of America in trust for the Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, California in accordance with the Indian Land Consolidation Act of January 12, 1983, (25 U.S.C. §2202).

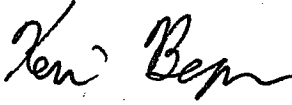
Should any of the below-listed known interested parties feel adversely affected by this decision, an appeal may be filed within thirty (30) days of receipt of this notice with the Interior Board of Indian Appeals, U.S. Department of the Interior, 801 N. Quincy St., Suite 300, Arlington, Virginia 22203, in accordance with the regulations in 43 CFR 4.310-4.340 (copy enclosed).

Any notice of appeal to the Board must be signed by the appellant or the appellant's legal counsel, and the notice of the appeal must be mailed within thirty (30) days of the date of receipt of this notice. The notice of appeal should clearly identify the decision being appealed.

If possible, a copy of this decision should be attached. Any appellant must send copies of the notice of appeal to: (1) the Assistant Secretary of Indian Affairs, U.S. Department of Interior 1849 C Street, N.W., MS-3071-MIB, Washington, D.C. 20240; (2) each interested party known to the appellant; and (3) this office. Any notice of appeal sent to the Board of Indian Appeals must certify that copies have been sent to interested parties. If a notice of appeal is filed, the Board of Indian Appeals will notify appellant of further appeal procedures. If no appeal is timely filed, further notice of a final agency action will be issued by the undersigned pursuant to 25 CFR 151.12(b). No extension of time may be granted for filing a notice of appeal.

If any party receiving this notice is aware of additional governmental entities that may be affected by the subject acquisition, please forward a copy of this notice to said party or timely provide our office with the name and address of said party.

Sincerely,

Acting   
Regional Director

Enclosure:

Exhibit 1

cc: Distribution List

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State of California  
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U.S. Senator Dianne Feinstein – 7013 2630 0001 5557 5110  
880 Front Street, Suite 4236  
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600 Pacific Highway, Suite 103  
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1600 Pacific Highway, Suite 162  
San Diego, CA 92101-2474

San Diego County Board of Supervisors - 7013 2630 0001 5557 5141  
1600 Pacific Highway, Room 335  
San Diego, CA 92101-2480

San Diego County Sheriff's Department - 7013 2630 0001 5557 5158  
9621 Ridge Haven Court  
San Diego, CA 92120

San Diego County – 7013 2630 0001 5557 5165  
Planning & Development Services  
5510 Overland Avenue, Suite 110  
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San Diego County – 7013 2630 0001 5557 5172  
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1600 Pacific Highway, Rm 212  
San Diego, CA 92101

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1095 Barona Road  
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36190 Church Rd., Suite 1  
Campo, CA 91906

Chairperson – 7013 2630 0001 5557 5202  
Ewiiapaayp Band of Kumeyaay Indians  
4054 Willows Road  
Alpine, CA 91901

Chairperson - 7013 2630 0001 5557 5219  
Jamul Indian Village  
P.O. Box 612  
Jamul, CA 91935

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La Jolla Band of Luiseno Indians  
22000 Highway 76  
Pauma Valley, CA 92061

Chairperson – 7013 2630 0001 5557 5233  
La Posta Band of Mission Indians  
8 Crestwood Road  
Boulevard, CA 91905

Chairperson – 7013 2630 0001 5557 5240  
Los Coyotes Band of Cahuilla & Cupeno Indians  
P.O. Box 189  
Warner Springs, CA 92086

Chairperson – 7013 2630 0001 5557 5257  
Manzanita Band of Mission Indians  
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