

Santa Ynez Valley Concerned Citizens

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July 13, 2014

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

**RE: Final Environmental Assessment dated May 2014
Proposed Fee-to-Trust (FTT) acquisition of 5 parcels of approximately 1,433
acres known as "Camp 4" for the Santa Ynez Band of Chumash Indians (Tribe)**

Dear Ms. Dutschke:

The following comments are submitted on behalf of the Santa Ynez Valley Concerned Citizens (SYVCC).

Thank you for your willingness to extend the comment deadline to July 14, 2014, in response to the County of Santa Barbara's letter requesting an extension. The magnitude of the subject FTT application and the concomitant Environmental Assessment constitute a significant undertaking to comment within such a prohibitively short window of time. While the Tribe and their consultant, AES had several months - even years - to prepare the environmental document, the 30 day window and subsequent 15 day extension preclude the contracting of professional services to effectively and properly review and critique the document.

It is for this reason among many others that Santa Ynez Valley Concerned Citizens formally requests 1) an Environmental Impact Survey (EIS) be undertaken; and, 2) this FTT application and review be stayed until its completion and thorough review. To this end, SYVCC hereby re-submits, adopts and incorporates by reference herein its critique and comments set forth to the Regional Director on October 4, 2013 on the Draft Environmental Assessment and our subsequent letter of October 17, 2013 regarding comments on the Chumash Application for Trust Acquisition.

SYVCC reserves the right to submit additional comments on the proposed trust acquisition.

Founded in 2000, the mission of the Santa Ynez Valley Concerned Citizens is to inform, mobilize and articulate the concerns of the 22,000+ citizens of the greater Santa Ynez Valley on issues of land use, private property and stewardship of community resources. Where appropriate, we promote constructive dialogue on issues of civic concern and request accountability from governmental entities and officials.

Preliminary Issues: TRIBAL CONSOLIDATION AREA (TCA)

SYVCC asserts that the FTT acquisition process employed in this transaction has diverged from the established procedures established under 25 CFR 151 and created substantive confusion.

On June 17, 2013, the Pacific Regional Office approved a “**Tribal Consolidation Area**” concurrent with the Santa Ynez Band of Chumash Indians’ (tribe) application for FTT acquisition of the property known as Camp 4 in Santa Ynez, California. The TCA served as a foundational document for both the tribe’s Application for Trust Acquisition (FTT) and for the Draft Environmental Assessment subsequently released for comment, dated August 2013. Based upon the TCA, the tribe asserted and the Draft EA depended upon a conclusion that the proposed acquisition would be evaluated under section 25 CFR 151.10 (*on-reservation acquisition*) as opposed to section 25 CFR 151.11 (*off-reservation acquisition*). Camp 4 is located 1.75 miles from the tribe’s reservation and does not have any shared boundaries with the reservation, thus analysis as an off-reservation acquisition is required.

Further complicating the issue, and after the Director’s action was appealed by numerous local entities (including SYVCC, the County of Santa Barbara, and POLO), the tribe requested from the Pacific Regional Director, that the Tribal Consolidation Area be withdrawn *without prejudice* (thereby allowing that the TCA could be resubmitted). On October 28, the appellants received word that the IBIA dismissed their appeals based upon the tribe’s withdrawal declaring the decision by BIA to be moot and therefore without any legal effect.

Several parties, including the County of Santa Barbara, Senator Diane Feinstein, Representative Lois Capps and several appellants, questioned the status and propriety of the initial BIA decision to approve with as of yet no answer to these queries. Failure to clarify these issues has created confusion with negative consequences and the potential for harm and injury for buyers and sellers of property within the TCA boundaries. The Chumash tribe now refers to the TCA as a “*Guidance and Planning Document.*”

As a planning document for the tribe, properties acquired within the TCA and held presently in fee including but not limited to:

- 6.9 acre site across Hwy 246 from the reservation
- 5.8 acre site abutting Hwy 246 containing the tribe’s newly constructed Gas Station Car Wash complex
- Remediated former gas station at the corner of SR 246 and Edison Street
- Former Mowry Farm property along Meadowvale & Hwy 246
- Former Cabrillo development parcels along Meadowvale

All of the above are in the Santa Ynez Township and are targeted for FTT acquisition by the tribe.

Under NEPA, “**Cumulative impacts of past, present and reasonably foreseeable actions are evaluated...reasonable, appropriate, scientific methods are used to evaluate each impact the significance of each impact is explained and well documented...**” None of the above listed parcels are evaluated within the May 2014 Environmental Assessment. Additionally, the applicant publicly announced concurrent with the period of analysis, a planned expansion of the current casino, hotel and resort property and parking structures...all presenting significant potential burden and impacts upon the environment and all unevaluated within the May 2014 Environmental Assessment.

SYVCC asserts that failure to analyze and address the above within the environmental document amounts to piecemeal development which could produce harm and injury to surrounding residents, businesses and governmental agencies. Clearly, the BIA has an obligation to consider the impact of the various trust acquisitions the tribe has pursued on a collective rather than piecemeal basis. ***An Environmental Impact Survey is necessary and required.***

Inappropriate Assertions and Findings of Fact by the Environmental Consultant:

The Environmental Assessment makes two unsubstantiated assertions which exceed the scope and by their nature are the purview of the BIA Regional Director and not the applicant and /or environmental consultant. On page 1.6 of the EA, the report presents the applicant's argument that the property in question (Camp 4) is part of the tribe's ancestral lands held for the tribe by the Catholic Church. This assertion is unsubstantiated and contrary to the historical record and legal history of the property. Once again, no substantiation or evidence to support this claim is provided by the environmental consultant or the applicant. ***The mere assertion of a legal theory is not a finding of fact.***

A more plausible historical record is easily obtainable. Santa Barbara County Counsel succinctly articulated the historical record in the County of Santa Barbara's Appeal of the Regional Director's decision to approve the Tribal Consolidation Area:

"This purpose is founded on a flawed and totally erroneous factual assertion, to wit, the purpose for the Catholic Church's ownership of the land. The true facts are that the Spanish Land Grant to the Roman Catholic Church were given for the purposes of funding a college in California by the Church, hence the original name for the land Grant, "College Rancho," in a process remarkably similar to the USA Land Grant College program. But by making the bald assertion that the entire 11,000+ acres was given for the use of the Indian Tribe, the Tribe (Applicant SYVCI) attempts to usurp preferential treatment of claims over a huge area for which it has no cognizable land title claims. In reality, the only land designated or used for tribal or reservation purposes was the original 99 acre which the federal Indian Agent for the Mission Indians accepted in quit claim from the Catholic Bishop. There is no factual basis for assertions such as "[A]ll these lands [11,000 acres] were considered to have been the property of the Santa Ynez Band of Mission Indians....."

SYVCC asserts that the above citing represents a factually superior assessment of the land claim for Camp 4. The environmental assessment and the trust acquisition application provide no evidentiary basis to refute our assertion or substantiate the applicant's assertion. Unsupported and unsubstantiated claims have no place in an environmental document for decision making purposes. A Finding of Fact by the BIA is required, along with evidence for public scrutiny.

The second assertion improperly rendered comprises the restatement of the applicant's purpose and need statement. The tribe asserts that they possess a "critical" shortage of housing and are unable to provide housing for their 136 enrolled members and 1300 lineal descendants. The report contains no documentation to validate or substantiate the claim of urgency or criticality of the postulated need. The applicant proposes to remove significant portions of land from state and local jurisdiction on the basis of a claim it chooses not to substantiate, while at the same time asserting that the proposed project will not result in an increase in the local population based upon the EA's baseline assertion.

Additionally, no inventory of current tribal residential holdings is provided or analyzed. In addition to residential property located on the present reservation, purportedly as many as 40 residential properties throughout the greater Santa Ynez Valley are owned and occupied by members of the tribe. According to the applicant, Camp 4 property to be developed for residential purposes will not be available for 10 years. How will this time interval address a “critical” housing shortage? How will the recently announced expansion of casino facilities impact the residential housing inventory on the current reservation? Once again, a substantiated finding by the BIA Regional Director is necessary with availability for public scrutiny...not a mere assertion by an environmental consultant. ***Once again, an Environmental Impact Survey coupled with substantiated Findings of Fact by the Director is required and necessary to properly assess the needs assessment called for in the federal statute.***

It is confusing to assess how the proposed project addresses the postulated “critical housing shortage.” The tribe asserts the need to address housing for 136 enrolled members and 1300 linear descendants. The present inventory on the existing reservation accounts for 17% of the need. Unless the tribe proposes to house 1300 lineal descendants within the 143 proposed homes resulting in a minimum of 9-10 residents per home then the project fails to address the need and thus must be understated. If this is not the case than one might presume that the project is undersized to meet the objective or that the actual objective is to develop substantially more homes on the site than included within the project description. ***The project description is incomplete, contradictory, and clearly demands a thorough Environmental Impact Survey.***

Drought And Water Supply Considerations:

Concurrent with the tribe’s acquisition of Camp 4 and initiation of the FTT acquisition process has been perhaps the most significant drought event in recorded history to impact the State of California and the Santa Ynez Valley. Coincidental to the extreme impacts of the drought, the State of California has acknowledged a risk from Chromium 6 levels within the groundwater and has mandated complex and costly mitigation requirements.

As a customer of the local water purveyor, the Santa Ynez River Conservation District Improvement District #1, the tribe has been apprised for months of the approaching concerns and the potential supply implications. However, the tribe’s Environmental Assessment is silent on the implications of the drought.

We adopt and incorporate by reference two EA comment letters to the Regional Director by the *Santa Ynez Rancho Estates Mutual Water Company, Inc. (SYRE)* dated *October 4, 2013 and June 26, 2014*. SYRE is well positioned to evaluate the hydrology elements of the Environmental Assessment as they manage resources for a comparably sized acreage and rely similarly on groundwater wells to meet their needs. Based upon real time performance for their mutual water company, SYRE correctly identified significant weaknesses in the projected water demand provided within the Camp 4 Environmental Assessment. Based upon the SYRE analysis, the Environmental Assessment significantly under-reports the water utilization for both of the listed alternatives provided within the Tribe’s EA.

Water Quality And Chromium 6 Considerations:

The Tribe may argue that land held in FTT would not be subject to State of California water quality regulations. However, groundwater is acquired from aquifers that don't respect property lines. The recently announced Chromium 6 regulations coupled with the drought have forced the local water purveyor, ID #1, to significantly reduce and perhaps curtail deliveries to agricultural customers within the Santa Ynez Valley. The concomitant response of the agricultural community has been to expand groundwater pumping through the creation of new wells expanding the competition for ground water supplies. Argument continues to be made that the aquifers of the Santa Ynez Valley are in deficit and expanded pumping for the proposed residential development and tribal hall complex could exacerbate this deficit to the detriment of all in the community.

Couple these concerns with the recently announced expansion plans by the tribe for the current reservation and their multiple properties in various stages of FTT acquisition within the area described within the Tribal Consolidation Area, meaningful and thorough analysis of water supply considerations is paramount to avoid injury and harm to residents neighboring the Camp 4 property and the community as a whole. ***The Environmental Assessment needs to be replaced with a thorough Environmental Impact Survey inclusive of a cumulative hydrology analysis and cumulative impact assessment.***

Cumulative Issue Considerations:

In October 2013, SYVCC provided comments on the Draft Environmental Assessment and the FTT application by the tribe for the Camp 4 property. We have noted the responses provided by the environmental consultant AES. While some AES answers were helpful and provided some clarity, the preponderance of replies were insufficient and largely unanswered. As stated earlier, we formally re-assert all of our previous comments from our October 4, 2013 and October 17, 2013 comment letters and adopt and incorporate by reference these documents and all supporting documents incorporated within those responses to be made of our comments to the Final Environmental Assessment dated May 2014.

The SYVCC draws its membership primarily from the greater Santa Ynez Valley and Santa Barbara County as a whole. We have been provided by our members with additional responses and comments regarding the Environmental Assessment which, when added to the analysis, provide a global and cumulative analysis and response on behalf of the impacted communities. Due to the time constraints, no one participant could be expected to completely address the sheer magnitude of the environmental document. We therefore adopt and incorporate by reference herein the following documents in an effort to provide as complete an administrative record of the significant inadequacy of the Environmental Assessment:

- 1. The County of Santa Barbara's Comments on the May 2014 Final Environmental Assessment for the Santa Ynez Band of Chumash Indians Camp 4 Fee-to-Trust, dated July 11, 2014**
- 2. Comments on Final Assessment for Santa Ynez Band of Chumash Indians Camp 4 Fee-to-Trust dated July 10, 2014 by the Environmental Defense Center and the Santa Ynez Valley Alliance**

3. **Additional Comments to the Chumash Environmental Assessment dated July 10, 2014 by Preservation of Los Olivos (POLO)**
4. **Comments of Kelly B. Gray Re: The Santa Ynez Band of Chumash Indian's May 2014 Final Environmental Assessment, Camp 4 Property dated June 25, 2014**
5. **Two (2) letters submitted by the Santa Ynez Rancho Estates Mutual Water Company to the BIA dated October 4, 2013 and June 26, 2014 providing comments on the August 2013 Draft Environmental Assessment and the May 2014 Final Environmental Assessment**
6. **The Statement of Reasons for Appeal to the June 17, 2013 decision by the Regional Director to Approve the Land Consolidation and Acquisition plan of the Chumash Indians to the United States Department of the Interior: Interior Board of Indian Appeals dated September 11, 2013 by Dennis Marshall County Counsel for the County of Santa Barbara.**
7. **Comments on Environmental Assessment, Santa Ynez Band of Chumash Indians, Camp 4 Fee-to-Trust by C. David and Andriette Culbertson dated September 27, 2013**
8. **Re: Re-submission of the Santa Ynez Band of Mission Indians of the Santa Ynez Reservation Fee to Trust Land Acquisition Application for 1,427.781 Acres: Comment letter dated December 9, 2013 by *Stand Up for California***
9. **Comment on Environmental Assessment (EA) of Proposed Trust Acquisition of Five Parcels known as the Camp 4 Property dated October 1, 2013 by *Stand Up For California***

In conclusion, SYVCC asserts that based upon a thorough review of the preceding, a clear, unambiguous and thoroughly substantiated argument has been presented herein that the proposed Trust Acquisition provides potentially significant impacts to the surrounding environment, inclusive of but not limited to biological resources, loss of agricultural land, land use conflicts, impacts to water quality and supply, wastewater management, air quality, visual resources, traffic burden and cumulative impacts.

The National Environmental Policy Act is equally clear and unambiguous that an Environmental Assessment is appropriate only "where no effect on the environment is possible".

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Therefore SYVCC asserts and demands that the BIA Regional Director require that a thorough and rigorous Environmental Impact Survey be undertaken before any action is contemplated regarding the FTT acquisition of Camp 4 by the Santa Ynez Band of Chumash Indians.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "G. M. Simon". The signature is fluid and cursive, with a large initial "G" and "S".

Gregory M. Simon, Chairman
SANTA YNEZ VALLEY CONCERNED CITIZENS

cc: T. Gede, Bingham McCutchen