

Stand Up For California!

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December 9, 2013

Amy Dutschke, Regional Director
Pacific Regional Office
Bureau of Indian Affairs
2800 Cottage Way, Room W-2820
Sacramento, CA. 95826
Fax: 916 978 6099

**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**

Dear Regional Director Dutschke,

Stand Up For California submits this letter of comment to be included in the administrative record for the proposed Fee-to-Trust Application of the Santa Ynez Band of Mission Indians for 1,427.78 acres in Santa Ynez California.

The Santa Ynez Band of Mission Indians (Chumash/Tribe) has requested the Bureau of Indian Affairs (BIA) take approximately 1,427.78 acres into trust. In addition to the comments *Stand Up For California* has already submitted on October 17, 2013 regarding the Fee to Trust Application, we wish to adopt and incorporate, by this reference, the comments submitted by the County of Santa Barbara on October 7, 2013, with respect to the Environmental Assessment (EA) and the County of Santa Barbara October 31, 2013 comments on the Fee to Trust Application for the proposed acquisition. These comments are important and should be fully addressed when evaluating the EA and considering the Chumash Fee to Trust Application.

However, we must point out, that the current Re-Submitted Application is still relying on the EA that was issued for the prior application. An EA relying on the development of a Tribal Consolidation Area (TCA) which the Interior Board of Indian Affairs issued its Order to Vacate the Tribe's Land Consolidation and Acquisition Plan on October 24, 2013. The EA is inconsistent with the Re-Submitted application. The EA must be corrected and re-circulated preferably as a full Environmental Impact Statement (EIS) particularly now that this land acquisition is being properly reviewed as an Off Reservation acquisition under 25 C.F.R. 151.11.

Stand Up For California will address each of the criteria in 25 Code of Federal Regulations Part 151.10 and 151.11 as is required for Off Reservation Acquisitions.

¹ The Chumash EA states 1,433 acres, and the Application recites 1,427.78 acres –this inconsistency must be rectified.

I. The factors listed in 25 Code of Federal Regulations (C.F.R.) Part 151

The Chumash Fee-to-Trust Application does not fully address, or adhere to, all the factors in 25 C.F.R. Part 151 which are the regulations that govern fee to trust applications and specify the factors that must be considered by the Department of the Interior. Further this application is inconsistent with the purposes of 25 U.S.C. 465. Section 465 was intended to restore tribal land lost through the federal allotment process and to allow for the acquisition of land in trust until such time as a tribe had sufficient land to be economically self-sufficient. In this case, the acquisition does not constitute land lost to the Chumash through the federal government's allotment process. (Dawes Act) *The BIA has ignored the statutory limitations of 25 USC 465 and 25 CFR 151.11. The Chumash were not affected by the Dawes Act. The Chumash Reservation was not created until December of 1901 well after the impacts of the Dawes Act.*

Further, the Chumash exemplify the intended success of California's Proposition 1A passed in 2000 to provide a monopoly on casino style gaming that would generate revenue for tribal governments and raise the standard of living for all tribal members. The Tribe has purchased a number of other properties in the Santa Ynez Area and is a successful business model. The Chumash with its current land base and additional fee lands have achieved a diversified economic self-sufficiency!

On June 17, 2013, the Pacific Regional Office of the Bureau of Indian Affairs approved without notice to affected private property owners or affected local governments a Tribal Consolidation Plan (TCA). The TCA administratively created what amounted to a claim of aboriginal lands or restored lands for the Chumash. The proposed trust acquisition encompasses 1,427.78 acres located east of Route 154 and north of Armour Ranch Road within the TCA. The TCA on October 24, 2013 by Order of the Interior Board of Indian Appeals was vacated. However, Section 2.1 of the EA specifically states that the fee to trust acquisition located within the TCA is to be considered an On Reservation acquisition and processed under 25 C.F.R. 151.10.

We believe the EA should be corrected, issued as a full EIS and recirculated as remnants of the TCA remain in this document and will unfairly influence and affect the integrity of decision makers in this proposed acquisition. Development of the TCA while not fully stated in the Order to Vacate by the Interior Board of Indian Appeals was an abuse of the Regional Director's authority. Any decision influenced by perceptions created by the TCA as the Camp 4 property being "restored homelands" creates irreparable harm.

The BIA and the Chumash have ignored the statutory limitations of the California Land Commissions Act of 1851. The 1851 Act created a Board of Commissioners to determine the validity of all land claims, and it required every person including Indians "claiming lands in California by virtue of any right to title derived from the Spanish or Mexican government" to present the claim within two years. Any land not claimed within two years, and any land for which a claim was finally rejected was to be deemed "part of the public domain of the United States". The Chumash and the BIA have missed the deadline for a land claim by 160 years.

(a) 25 CFR 151.11(a) Off Reservation: considers the factors for an On Reservation acquisition 25 C.F.R. 151.10 (a) – (c) and (e) – (h). An off-reservation acquisition requires the Secretary to evaluate additional criteria when the request for land is located outside of the reservation or is noncontiguous to the tribe's reservation and the acquisition is not mandated. (Comments to the 151.10 criteria are under section II of this letter.)

(b) 151.11 (b) Off Reservation: Requires the distance from the boundaries of the tribe's reservation shall be considered as follows, *"as the distance between the tribe's reservation and the land to be acquired increases, the Secretary shall give greater scrutiny to the tribe's justification of anticipated benefits from the acquisition."* Further, that: *"The Secretary shall give greater weight to the concerns raised by local*

Fee to Trust Comments, for 1427.78 ac. for the Chumash Mission Indians of Santa Ynez, **government”**.

The proposed acquisition of Camp 4 parcels is 1.6+ miles from the reservation boundary. It is noncontiguous. The land is located beyond several private properties and across two intersecting state highways. This acquisition creates a checkerboard effect on the sovereign tribal land base and negatively affects the County and Community General Plans. The proposed development for the 1427.28 acres is jurisdictionally contradictory and inconsistent with both the County of Santa Barbara and Community General Plan. Taking the land into trust will have significant future taxation implications on the local government, the local school district and the State of California.

The Tribe in its Re-submitted narrative limits its description of tribal lands to only the developments that exist on trust lands along the Creek. This does not give a complete picture or analysis of the economic self-sufficiency of the Santa Ynez Band of Mission Indians. The Tribal lands owned in fee are extensive throughout the valley. The fee lands and commercial operations generate significant income and create jobs for non-tribal citizens in the area. The taxable revenues of these operations support local government and strengthen the surrounding community. The Chumash tribal land base held in fee and in trust is extensive.

Moreover, while the new rule in 25 C.F.R. 151.12 (The Patchak Patch) acknowledges stakeholders and places our names on the service list, there is still no indication from the BIA that our concerns will be taken seriously and given significant weight and consideration in the decision making process. *Stand Up For California* suggests it is reasonable to assert the concerns of the local affected private property owners in the area as well as the regional area, all stakeholders **must be considered equally** along with affected local government since the ruling by the U.S. Supreme Court in Patchak.

(c)151.11 (c) Off Reservation: “Where land is being acquired for business purposes, ***the tribe shall provide a plan which specifies the anticipated economic benefits associated with the proposed use***”. The Chumash have not provided a detailed comprehensive economic business plan demonstrating the economic benefits associated with this proposed acquisition. Here again, and this further demonstrates the need for a new EIS, Chumash EA states at 1-7 of the Introduction; ***“Secondarily, the trust acquisition of the proposed trust land would also allow full tribal governance over its existing agricultural operations on the property; thereby allowing the Tribe to continue to build economic self-sufficiency through diversified tribally governed commercial enterprises”***. (Emphasis added) Clearly, the Tribe as indicated in its own words has a business plan. A detailed explanation of the business plan describing fully what **“diversified tribally governed commercial enterprises”** means must be provided.

The fee to trust application states and restates over and over, the intent is to eliminate the jurisdictional authority of the County of Santa Barbara and the State of California over the 5 parcels known as Camp 4. Here again, this phrase of ***“tribally governed commercial enterprises”*** and a goal to remove the authority and jurisdiction of both the State and the County raises a red flag. What is it the Tribe wishes to do outside of the current County and state jurisdiction beyond the development of 143 homes, an event center and grape growing?

The Tribe states that the majority of the land will be ***“banked”*** for future use. But the Tribe does not explain what that future use may consist of. *Land banking* is not a new method of increasing capital. Many developers employ this income generator by purchasing land, holding land and selling it as the real estate market increases in value. However, tribal trust lands are not easily sold in order to collect a capital gain. Thus, land banking for tribal trust lands has a different meaning. Banking the land for a future use, and in this instance it appears to be, ***“tribally governed commercial enterprises”***.

Land banking trust land creates significant issues that certainly prevent any action by the BIA to issue an

Fee to Trust Comments, for 1427.78 ac. for the Chumash Mission Indians of Santa Ynez, environmental statement of a “Finding of No Significant Impact” (FONSI). 25 U.S.C. Section 465 is a land use statute. *To acquire the land in trust without an environmental review and proper mitigation of the future “tribally governed commercial enterprises” constitutes an arbitrary and capricious action subject to judicial invalidation. Taking land into trust for purposes of land banking is contrary to the intent and purpose of this land use statute.*

II. 25 C.F.R. 151.10 – On Reservation (a) the existence of statutory authority for the acquisition and any limitations contained in such authority;

This application cannot move forward until a complete EIS is prepared and recirculated since the existing EA is based upon an On Reservation Acquisition and the now vacated TCA. *Since the BIA is obligated to accommodate tribes, it would be wise to have an independent 3rd party be appointed as the lead agency managing the National Environmental Protection Act (NEPA) process. This will assure all affected parties a fair, objective and transparent process.*

The Tribe in the EA has stated its plans to create an **event center**. The EA ambiguously states that the event center will hold 100 events per year and accommodate 1000 persons. It is reasonable to conclude this equates to, two events per weekend year round. This raises a number of unanswered questions which heighten public concern. Here again, 25 CFR 151.11 requires the Tribe to issue a detailed business plan of the economic benefits to the Tribe.

(a) 25 C.F.R.151.10 On Reservation (b) the “need” of the individual Indian or the tribe for additional lands;

The Chumash application is absent a showing of “*immediate need*” or “*necessity*”. The Chumash are confusing its desire to **bank land** with the actual need for the protections afforded tribes by trust status. The Chumash have not stated a clear economic benefit for acquiring all 1427.78 acres of land in trust. Nor has the Chumash clearly defined any economic benefit of the ambiguous event center. The Chumash purchased this land on the open market and have exercised successful economic control over this land and many other fee land purchases in Santa Ynez for a number of years. The Chumash have achieved sustained economic self-determination.

The taking of this land into trust creates many negative impacts on the existing social-cultural, political and economic systems of the regional area. Citizens of the community lose control over the allowable developments of this land. Local government will lose ability to control developments significantly affecting its ability to protect the shared natural resources and the interests of the citizens that support it. The loss of this land is loss of taxable revenue that will be borne on the backs of all Santa Barbara County taxpayers, businesses, school districts, public safety and social services because the County of Santa Barbara must balance its budget. The proposed Cooperative Agreement offered by the Chumash does not wholly or fully address the economic impact to the County of Santa Barbara and all of its citizens through perpetuity.

The proposed use of open space and 143 homes has the potential of being worked out with the County of Santa Barbara and its Planning Department. The Tribe by holding the land in fee and developing it contributes to the strength of the local community as well as to the Tribe. The Tribe has not demonstrated that trust conveyance is necessary to facilitate tribal self-determination nor that the need of the land meets the statutory standards of 25 U.S.C. 465.

All Tribes are encouraged to strive for the greatest possible economic success. However the trust provisions of the Indian Reorganization Act (IRA) were not designed to subsidize tribes forever. Rather the IRA intent was

Fee to Trust Comments, for 1427.78 ac. for the Chumash Mission Indians of Santa Ynez, to provide a secure foundation from which tribal sovereigns could grow and achieve economic self-governance. The Chumash have achieved economic self-determination as evidenced by its being a major employer in the Santa Ynez Valley, a major land owner, a generous charitable contributor and an influential political player in local, state and federal politics.

Consequently any approval to acquire the land in trust without stating a clear economic benefit and submitting a detailed business plan will constitute an arbitrary and capricious action subject to judicial invalidation.

(b). 25 C.F.R. 151.10 On Reservation (c) The purposes for which the land will be used;

The Chumash first stated purpose for the additional 1,427.78 acres (5 parcels) to be taken into trust is for an additional 143 homes. Per the Chumash application there are 136 tribal members and 1300 lineal descendants. The Tribe in the EA has also stated their plans to create an event center. The event center will hold 100 events per year and accommodate 1000 persons. But the EA did not state the purpose or nature of the events. The Chumash application states that the trust acquisition of the proposed trust land would allow the Tribe to continue to build economic self-sufficiency through diversified tribally governed commercial enterprises". (Emphasis added) The Chumash have not clearly articulated what "*diversified tribally governed commercial enterprises*" it has in mind.

In a recent article posted in the Santa Maria Times, October 8, 2013 by Len Wood, *Extension granted for Camp 4 trust application comments*, Tribal Officials are attributed with stating;

"Any construction on Camp 4 would be subject to rules and review by the U.S. Environmental Protection Agency and the Army Corps of Engineers. Oversight for development would be by the BIA in accordance with the National Environmental Policy Act, tribal officials said."

This statement raises a number of red flags and questions that were not answered in the EA, the Application or the Re-submitted application. The quote above indicates plans for future construction beyond what is stated in the current EA, application or re-submitted application. The involvement of the EPA or Army Corps of Engineers suggests the need for approval of leasing under 25 CFR 162 or approvals under section 404 of the Clean Water Act.

- Is the Tribe planning to lease these 2.5 or 5 acres ranch homes to its 136 members or as a commercial venture to non-tribal citizens?
- Can tribal members who enter a lease then sub-lease these homes to non-tribal members or to tribal family members?
- Will the Tribe ensure that leases to non-Indians pay Possessory Interest taxes to the County of Santa Barbara?
- Will the Tribe lease to a major hotel or shopping mall chain for development of a commercial facility after the land is in trust?
- Is the Tribe planning on filling in a wetland or land that has been defined by the EPA as a navigable waterway of the U.S.?
- Is the Tribe planning on the development of another gas station with underground tanks that may affect a wetlands area?

The Chumash Fee-to-Trust Application, the EA and the re-submitted application fails to disclose the total purpose for which this land will be used. All any commenter can do is speculate as to the Tribe's future anticipated developments or actions. But this raises concerns for the BIA as well. How can decision makers

Fee to Trust Comments, for 1427.78 ac. for the Chumash Mission Indians of Santa Ynez, approve an application that is speculative? That is inconsistent with the land use aspect of the statute.

(c). 25 C.F.R. 151.10 On Reservation (d) If the land is to be acquired for an individual Indian, the amount of trust or restricted land already owned by or for that individual and the degree to which he needs assistance in handling his affairs.

The Fee-to-Trust Application is for the benefit of the tribal government of the Chumash. It is uncertain if any of the nearby or adjacent land or other lands in the valley are currently owned by individual Indians. The Chumash should confirm that it is or isn't, and identify all of the fee land owned by individual Indian members in the Santa Ynez Valley.

(d). 25 C.F.R. 151.10 (e) If the land to be acquired is in unrestricted fee status, the impact on the State and its political subdivision resulting from the removal of the land from the tax rolls.

The State of California has 110 Indian tribal governments and 78² additional tribal groups seeking federal recognition. If the Chumash are permitted to acquire land in trust when it has no immediate need for the land, other tribes throughout the state will claim entitlement to the same treatment by the Department of the Interior pursuant to the provisions of 25 USC section 476 subdivisions (f) and (g) which provide that no agency of the United States shall make a determination under the Indian Reorganization Act (IRA) that "*classifies, enhances, or diminishes the privileges and immunities available to an Indian tribe relative to other federally recognized tribes by virtues of their status as Indian tribes*"

Unlimited fee to trust acquisitions by tribes that have no *immediate need* for additional land or seek to acquire land when no land was lost due to the Dawes Act, constitutes federal interference with the powers reserved to the State in a manner patently at odds with the intent of the Tenth Amendment. The State's loss over land use and taxation, two fundamental attributes of its sovereignty has a serious negative generational impact on the non-tribal citizens of California.

Moreover, Santa Barbara County's comments make clear there is a tremendous tax implications for county taxpayers should this property be taken into trust. The proposed Cooperative Agreement only takes into consideration the current assessed value of the property in calculating the tax loses to the County and then only for a fixed number of years. Santa Ynez Valley residents have already experienced the negative impacts of on-reservation developments that affect the off reservation community throughout the Valley. The Cooperative Agreement offered by the Chumash to the County of Santa Barbara ends in ten years and does not consider the ongoing impacts.

Placing the additional land into trust creates reduction in tax revenue for the Santa Ynez community as well as the local School District and other social services. Please see the County of Santa Barbara letter of Comment on the EA. Serious impacts to the School District have not been addressed.

(e). 25 C.F.R. 151.10 (f) Jurisdictional problems and potential conflicts of land use which may arise;

The Chumash through open market purchases has regain control over the development on these lands, however transferring this land from fee to trust grants the Chumash governmental control over these lands. This creates a disruptive and practical consequence to the surrounding areas which are populated by non-Indians.

² While the Office of Acknowledgement lists 78 groups several of the petitions for federal recognition have been denied, or Indian groups have been joined with established tribes or the Asst. Secretary has without congressional authority administratively recognized a group as a tribal sovereign. Approximately 69 groups are still petitioning for recognition.

Fee to Trust Comments, for 1427.78 ac. for the Chumash Mission Indians of Santa Ynez, Transferring these lands into trust creates a mix of state and tribal jurisdictions which burden the administration of state and local governments and adversely affects the private property of landowners neighboring the tribal lands. Any claim by the Chumash that jurisdictional issues have been resolved is belied by the lack of mutually beneficial agreements with affected governmental or public entities. Jurisdiction issues remain until there is a comprehensive mutually beneficial agreement that wholly and fully addresses the concerns of the County of Santa Barbara and the Santa Ynez Valley residents. Any agreement must consider and address the impacts that the Chumash Casino has already created in the Valley.

It is without dispute that California's criminal law is fully enforceable in Indian Country granting California Sheriffs both the authority and the obligation to protect Indian and non-Indians from criminals on California's Reservation and Rancherias. At the same time, California Indian governments have a federal status that presents a number of gray areas to members of law enforcement in the exercise of this obligation.

In 2010, President Obama signed into law the Tribal Law and Order Act, tribes can now petition for the federal government to have concurrent jurisdiction with the state. Tribes can employ their own Federal Law Enforcement Officers with tribal and federal authority on the reservation and limited federal authority off-reservation. This includes limited authority over non-Indian citizens.

- Has a memorandum of understanding between the County Sheriff and the Chumash been developed to address jurisdictional issues related to law enforcement protocols and investigative procedures as well as a memorandum that considers concurrent jurisdiction with federal authorities?
- Is there a memorandum of understanding with the District Attorney's Office?

(f). 25 C.F.R. 151.10 (g) If the land to be acquired is in fee status, whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status.

The property that the Chumash have proposed for trust status is in fee status. There are several easements and public rights on the properties that were specifically identified in the application. Also the Notice of Land Acquisition Application included copies of past litigation that identified potential monetary claims, private interests and public rights in the property. The Secretary of the Interior must ensure and stipulate in any final decision that easements, public rights on the properties remain enforceable on the trust parcels.

Regional Director Dutschke 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 directly contacting easement owners, addressing the issues of public rights represents a "taking or inverse condemnation" without due process or just compensation. Additionally, loss of access to private properties would devalue and make specific properties unmarketable creating further irreparable harm without just compensation. The application does not fully or wholly address or resolve these real issues.

(g). 25 C.F.R. 151.10 (h) 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. (For copies, write to the Department of the Interior, Bureau of Indian Affairs, Branch of Environmental Services, 1849 C Street NW., Room 4525 MIB, Washington, DC 20240.)

The application did not provide a report nor do we know if a report conforming to 516 DM 6, appendix 4, National Environmental Policy Act Revised Implementing Procedures, and 602 DM 2, Land Acquisitions has

Fee to Trust Comments, for 1427.78 ac. for the Chumash Mission Indians of Santa Ynez, been submitted by the Chumash, the BIA or the Secretary of the Interior. Such a report is necessary now considering the Tribal Officials quote regarding the EPA and Army Core of Engineers. Further this land is agricultural land. California only banned the use of DDT and other cancer causing pesticides in 1972. These banned pesticide residues can persist in topsoil several decades. It is very important that soil testing for these chemicals are completed especially in light of the fact the tribe is planning housing for its members.

III. CONCLUSION:

This application as it is must be denied for all of the aforementioned reasons.

Sincerely,

A handwritten signature in cursive script that reads "Cheryl A. Schmit". The signature is written in dark ink and is positioned above the typed name and contact information.

Cheryl Schmit, Director
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