Stand Up For California!
"Citizens making a difference"

www.standupca.org

P. O. Box 355
Penryn, CA. 95663

October 1, 2013

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

RE: Comment on Environmental Assessment (EA) of Proposed Trust Acquisition of Five Parcels known as the Camp 4 Property

Dear Regional Director Dutschke,

The following comments are submitted on behalf of *Stand Up For California*. First, thank you for your willingness to extend the comment deadline to October 7, 2013, in response to the County of Santa Barbara's letter requesting an extension. Clearly the size and scope of this proposed fee to trust acquisition combined with California's first ever approved Tribal Consolidation Area is significant and warranted an extension.

Stand Up For California reserves the right to submit additional comments on the proposed trust acquisition. In part, one of two of the Freedom of Information requests we have made to the Pacific Regional Office, Bureau of Indian Affairs (BIA) was returned with a partial denial. *Stand Up For California* has filed an Appeal. We are still awaiting documents on the second Freedom of Information Act request. Since the proposed Trust Acquisition is within the Tribal Consolidation Area (TCA), a full and fair evaluation of the EA is dependent on the responses of both the FOIA requests and FOIA Appeal.

Stand Up For California submits the following comments regarding; (1) Section M – Tribal Consolidation Plan, (2) purpose and need of the tribe for this fee to trust acquisition, (3) the deficiency of the alternatives listed and omitted, (4) its impact on the Santa Ynez Valley, (5) unaddressed impacts and (6) conclusion.

Discussion

I. Section M – Tribal Consolidation Plan (TCA)

Section M of the EA includes the Tribal Consolidation Plan. This Plan was approved June 17, 2013 by the Pacific Regional Office of the BIA without notice to the private property owners or affected local governments. ***The TCA administratively creates what amounts to a claim of aboriginal lands or restored lands for the Tribe. Therefore, in order to appropriately evaluate the Fee to Trust Acquisition we must evaluate the TCA.***

While there is no statutory or regulatory criteria upon which to develop a TCA based on the acquisition of new lands, there is specific regulatory authority to acquire land that is outside of a reservation boundary. The Chumash reservation is approximately 1.6 miles from the Camp 4 property. *These parcels do not share a boundary with the established reservation land and therefore must be reviewed under 151.11 an Off Reservation Acquisition.*

The EA appears to request the land as retribution to be ***"banked"*** [1] for use for future generations. The Tribe identifies the need for this retribution as the failure of the federal government to grant title to their claim on lands in 1851. The Tribe further asserts it was the intent of the Catholic Church and Mexican and or Spanish Government to give these lands to the Tribe. The very presents of this language in the EA and the TCA appears intended to sidetrack decision makers from the merits of the fee to trust transaction before them.

The TCA is currently being challenged by the County of Santa Barbara, Concerned Citizens of Santa Ynez, Meadowlark Ranches Association and the Santa Ynez Valley Association of Realtors before the Interior Board of Indian Affairs (IBIA). Therefore, for the purposes of preserving the arguments made in the Statement of Reasons by the County of the Santa Barbara, Concerned Citizens of Santa Ynez, Meadowlark Ranches Association and the Santa Ynez Valley Association of Realtors, ***Stand Up For California "adopts and incorporates" the Statement of Reasons for Appeal in the June 17, 2013 Decision by Pacific Regional Director to approve Land Consolidation and Acquisition Plan of the Santa Ynez Band of Chumash Indians submitted by all parties to the IBIA.***

The "concept" of the TCA is based solely on an IBIA ruling, *Absentee Shawnee Tribe v. Anadarko Area Director*, Bureau of Indian Affairs, 18 IBIA 156 (02/20/1990). This ruling has no statutory or regulatory law to support its conclusion. Administrative Judge Vogt in the *Absentee Shawnee Tribe v. Anadarko Area Director* reversed and remanded the prior negative decisions stating:

> "The Board finds that, *in the absence of statutory or regulatory criteria*, appellee had the discretionary authority to analyze appellant's plan under *reasonable criteria of his own devising.* Appellee's initial analysis which took into account *such factors as the geographic extent of proposed consolidation area vis-a-vis the tribes need for additional* and, and the BIA's ability to provide services to the land, appears to be *reasonably related to the ultimate development of a realistic and manageable land for the trust acquisition of additional land for the tribe." (Emphasis added)*

This ruling without statutory or regulatory criteria permits this *specific* Regional Director in this *specific* instance to create reasonable criteria of his/her own devising. Judge Vogt suggests the following are reasonable criteria:

(a) The extent of the geographic area,
(b) Ultimate plans for development of a trust land, and
(c) The tribes need for additional lands.

However, it is extremely questionable if Regional Director Amy Dutschke used or considered the suggestions of Judge Vogt, in devising her own *"reasonable criteria"*. It appears, Regional Director Dutschke provides no criteria for her approval at all! Let's consider the approved TCA under Judge Vogt's suggested criteria:

[1] ***"Land banking"*** is the acquisition of land by tribes for some future undisclosed use. This action circumvents the intent of federal regulations intended to address serious and critical taxation and jurisdictional issues.

(a) Extent of geographic area – suggested by Judge Vogt

The approved TCA encompasses approximately 11,500 ac of private property that has been under the control of the State of California and the County of Santa Barbara for 163 years. It has been in the private ownership of individual citizens for as many years. The Chumash Mission Indians of Santa Ynez (Tribe/Chumash) are asserting a claim of aboriginal lands through an administrative process. The history provided by the tribe in the proposed TCA Plan evidently was not verified or questioned. While the Tribe mentions the 1851 Act, the Tribe fails to provide the evidence submitted to the Commission for validation of their Spanish or Mexican Claim on the land. In the end, whatever evidence was submitted to the 1851 Commission was insufficient as the claim of title was rejected.

The assertion that the Spanish or the Mexican Government were intending to give the Mission lands back to the Indians raises many questions. History is clear that the actions of the Spanish and Mexican Governments were as Imperialistic nations assimilating populations on newly conquered lands.[2] When Spain or Mexico created colonies they did not recognize the existing governance but rather assimilated the populations under their authority, jurisdiction and governance. Recognition of Chumash Governance did not come till many years later under the superintendence of the United States government.

The Chumash fail to inform decision makers that the 1851 Act eliminated adverse claims on all California Titles. Even the adverse claims of Indians or quasi sovereigns were rejected making clear *there are no aboriginal land claims in California.* As a matter of federal law, it seems a very difficult task for the Pacific Regional Director to create reasonable and lawful criteria to develop a TCA *anywhere* in California. To do so, and take land into trust under the current guidelines established in this EA wrapped up in the TCA creates *irreparable harm*, clearly a standard that is ripe for a Temporary Restraining Order or Injunction.

To refresh the memory of decision makers, the Mexican War concluded in 1848. Mexico ceded to the United States what is now the southwestern United States, including all of the present day State of California. (Treaty of Peace, Friendship, Limits and Settlement, U.S. –Mex., May 30, 1948, 9 Stat. 922, T, T.S. No. 207 (1850). There is a general belief in Indian Country that the Mexican government betrayed Indians by not including their lands to be set aside for tribes in this treaty.

Shortly thereafter, Congress enacted a statue to settle land claims in the newly acquired territory. (Act of March 3, 1851, ch.41,9 Stat. 631). The 1851 Act created a Board of Commissioners to determine the validity of all 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." (1851 Act 13, 9 Stat. at 633. *See - United States v. California*, 436 U.S. 32, 34 n.3 (1978). The Chumash and the BIA have missed the deadline for a land claim by 160 years. ***Development of the TCA is an abuse of the Regional Directors authority. The decision is arbitrary and capricious and based on erroneous facts.***

---

[2] The **Spanish missions in California** comprise a series of religious and military outposts established by Spanish Catholics of the Franciscan Order between 1769 and 1833 to spread the Christian faith among the local Native Americans. **The missions represented the first major effort by Europeans to colonize the Pacific Coast region,** and gave Spain a valuable toehold in the frontier land. The settlers introduced European livestock, fruits, vegetables, cattle, horses and ranching into the California region; however, **the Spanish colonization of California** also brought with it serious negative consequences to the Native American populations with whom the missionaries came in contact. The government of Mexico shut down the missions in the 1830s. **In the end, the mission had mixed results in its objective to convert, educate, and "civilize" the indigenous population and transforming the natives into Spanish colonial citizens.**

(b) Ultimate plans for development of a trust land suggested by Judge Vogt

The Tribe has only stated that they will build 143 homes, supporting utilities and maintain the existing grape orchard. There is significant acreage, more than half of the remaining 1433 acres for which ***"no ultimate plans"*** are describe. Instead, the Tribe has stated they are land banking for future needs of the Tribe. The concept of land banking for future undetermined needs was not foreseen in 1934 at the enactment of the Indian Reorganization Act.

While the Chumash have stated that this is a non-gaming application, there is strong likelihood that the intended use of the land will change. In fact, there is significant information that the Tribe wants to use the land for something other than 143 homes. In 2003, the Chumash proposed housing and "a casino/hotel complex development" on this same land.[3] It would appear now, the Tribe is attempting to piece-meal the *ultimate development plans* for this property. Further, there is no statement in the draft Cooperative Agreement offered by the Chumash to promise not to construct a casino/hotel or other commercial development on this property. ***The EA and TCA together send a strong message that the tribe wants to get the land safely in trust and change the intended use at some future date.***

While the concerns of the local government and the surrounding community of citizens may be considered speculative, the BIA must recall the recent actions of the Tule River Indian Tribe of Tulare County. The Tule River Indian Tribe and the BIA asserted the concerns expressed by local government and community members about future casino development were speculative. In 2011, the Tule River Indian Tribe submitted an application for 40 acres off reservation in the City of Porterville. The Tribe stated it was a non-gaming application. As evidenced in the County and State brief before the IBIA, the Tribe's intent was to use the land for gaming. As a result, the Tule River Indian Tribe withdrew its application. This is just the most recent example of a *bait and switch* transaction.

(c) The tribes need for additional lands suggested by Judge Vogt

In the *Absentee Shawnee Tribe v. Anadarko Area Director* the Tribe presented factors of high tribal unemployment rate, low educational level, substandard housing, low standard of living and high disease rate and its own inability to generate additional income from existing tribal lands to assist its people' economic development. The *purpose and need* of the Absentee Shawnee Tribe was to gain additional lands in order to increase the tribal land base and gain access to new economic markets within Oklahoma.

The Chumash *"Purpose and Need"* as stated in the EA, pales in comparison to that reviewed before Judge Vogt. The Chumash state, "the purpose and need is for Consolidation and Acquisition Plan by providing housing within the Tribal Consolidation Area to accommodate the Tribe's current members and anticipated growth". In the Chumash Application, the Tribe further states it wants the land in trust in order to remove the authority and jurisdiction of the County and the State.

The Chumash are truly a Tribe that tells a 'rag to riches' story. A story that became a reality due to the business oriented leadership of the Tribal Council and the Tribe's good fortune to be located in the Santa Ynez Valley. The Tribe's casino market area is free of competition from Los Angeles to Fresno County. A monthly stipend to members has been reported to be as high as $500,000.00 per enrolled tribal member per year. The enrolled

[3] The Tribe's 1999 tribal state compact in section 4.2 provides for two casinos

members (approximately 136)[4] have the means to purchase substantial housing anywhere in the United States or abroad. Tribal members have the ability to provide for private schools and advanced college educations for their children and future generations without tribal government assistance.

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 have been and continue to be exceedingly influential in the State political system. The modern Chumash Tribe is not a victim of governmental policy nor is the voice of the Tribe discounted in local, state or federal policy actions.

II. Purpose and Need

The proposed trust acquisition encompasses 1,433 acres located east of Route 154 and north of Armour Ranch Road within a (TCA) in an unincorporated area of Santa Barbara County. Section 2.1 of the EA specially states that there is no other land comparable for a fee to trust acquisition within the TCA. Moreover, lands outside of the TCA would not meet the purpose and needs of the proposed action that is within the TCA. The stated *need and purpose* of this land acquisition is that lands outside of the TCA would constitute an Off Reservation acquisition. Using the federal regulations for Off Reservation acquisition creates a higher standard of review and provides for greater weight in the decision process to affected government. It would appear the Chumash *purpose and need* is to circumvent greater scrutiny of the fee to trust acquisition.[5]

The Tribe and the BIA are asserting that lands within the TCA approved on June 17, 2013, are to be considered an *On Reservation* acquisition. The Chumash reservation is approximately 1.6 miles from the Camp 4 property. These parcels do not share a boundary with the established reservation land and therefore must be reviewed under 151.11. *There is no statutory or regulatory law that supports this is to be an On Reservation Acquisition.*

III. Deficiency of Alternatives

The EA states it has been prepared, "…to comply with the National Environmental Policy Act, 40 USC §4332, and further defined in 40 CFR §§ 1510.10-218." Specifically, the EA does not include a reasonable range of project alternatives, it does not provide an adequate level of analysis of potential effects the proposed action may have on the physical or human environment, and it fails to consider the indirect and cumulative impacts of the Tribe's proposed action. As such, the EA does not provide the Tribe/BIA an adequate assessment of the potential effects that may result from the construction and operation of the proposed project.

- The EA fails to state the *"ultimate total development"* of the land.

- The EA fails to consider land outside of the TCA as that would be considered an off reservation acquisition. The EA states the Tribe has an approved Tribal Consolidation Area over approximately 11,500 acres within the TCA, yet the project site is the only site where the proposed project (and only the proposed project) will satisfy the objectives of the Tribe. *The EA does not include sufficient evidence to support this conclusion.*

[4] Tribal Application at page 9 of 16

[5] The Chumash have been members of the California Fee to Trust Consortium whose goal since 1998 has been to streamline the fee to trust process. In this instance, does "streamline" mean to circumvent a more stringent regulatory process that is required?

- The EA does not address the concerns that the project is contrary to the current zoning and general plan of the community. The recent ruling by the United States Supreme Court in Patchak, made clear that the Indian Reorganization Act is a *land use statute*.

- The EA does not address the full impact of the proposed action to the Agricultural Preserve of the Santa Ynez Valley.

IV After Acquired Lands and Impacts on Santa Ynez Valley

The Tribe further states that this is a non-gaming application. I disagree. This application must be considered and processed as gaming because the land is identified as within the recently approved TCA which determines that the land must be processed as an On Reservation transaction. The Tribes 1999 Tribal State Compact permits this tribe to have ***two*** casinos. The "California Fee to Trust Consortium" (Consortium) of which the Tribe is a member since its inception repeatedly fails to recognize gaming applications and process them accordingly.

The development of the TCA and the proposed fee to trust affects landowners *within and without* the boundaries of the TCA. The Tribe in its purchase of the 1,433 acres through the open market has regained control over the development of these parcels, however transferring this land from fee to trust grants the tribe governmental control over these lands. This creates a disruptive and practical consequence to the surrounding areas which are populated by non-Indians. Transferring these lands into trust creates a mix of state and tribal jurisdictions which burden the administration of state and local government and adversely affect landowners neighboring the tribal lands. Land will be removed from the tax rolls significantly affecting the future economics of the area.

This acquisition is a major federal action. Moreover, because the land has the potential to meet an exception under Section 20 of IGRA, *Stand Up For California* repeats, this proposed transaction requires a full Environmental Impact Statement (EIS).

V. Unaddressed Impacts

One of the Purposes of the National Environmental Policy Act (NEPA) is to provide a full and fair review of all adverse environmental impacts as well as listing all affected stakeholders. The EA submitted for the Camp 4 fee to trust acquisition does not meet this standard. The size and scope of the proposed fee to trust acquisition of 1433 acres raises substantial questions suggesting that project may have a significant environmental effect.

- These impacts must be judged against their local and regional context (40 CFR Sec. 1508.27 (a)) and an EIS prepared if either the impacts or the project itself is likely to be highly controversial. This proposed fee to trust has hit the pages of the Los Angeles Times beginning in 2005. It has been the topic of numerous news stories in state and nationally as well as many letters to the editor of local papers. It has been the subject of oversight hearings by the House Resources Sub-committee on American Indian and Alaskan Native Affairs. This is a controversial proposal.

- The proposed project does not describe the full use of the 1433 acres of land. An EIS is similarly required where the extent of impacts is "highly uncertain or involves unique or unknown risks." 40 CFR sec. 1508.27 (b)(5).

- The BIA must initiate a full EIS.

Ground Water:
Water throughout California is a scarce resource that must be properly managed. The EA discusses the Tribes use, but not a management plan that encompasses the off trust lands community. The acquisition of the 1433 ac. means a loss of local control of the aquifer to the entire valley. Major decisions regarding water usage will no longer be made by local people with locally-valued decision about the impacts and use. The water use projected by the 5-acre homes is 50-100% less than that actually used by the contiguous 5-acre neighborhood.

Local water companies do not necessarily own the land that infrastructure (wells, reservoirs, pumping stations, etc.) is located on. "Easements and or leased land" supports the use of these properties for infrastructure. It is not clear if the encumbrances (easements, agreements, and leases) will survive if the 1,433 acres are taken into trust. Local water companies and the many private residences to which they provide service may potentially lose their water source. (*See* – Comment on Easements)

Easements:
The Secretary of the Interior must ensure and stipulate in any final decision that easements remain enforce on the trust parcels. Regional Directory 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 represents a ***"taking or inverse condemnation"*** without due process or just compensation. Additionally, loss of access to private properties would devalue and make them unmarketable.

Biological Resources:
While the EA provides general information and maps regarding biological resources it fails to analyze how the project impacts the surrounding regional area. A complete analysis of the potential biological impacts of the project is fully dependent upon an adequate and thorough survey and the significance of the potential impacts cannot be determined until surveys of impacts to the surrounding area are complete.

Air Emissions:
Appendix B - provides rows and columns of numbers but this section fails to identify how this project conforms to Regional Air Quality Strategy for Santa Barbara County. Analysis to demonstrate conformance must be included.

Cumulative Impacts:
The cumulative impacts analysis should include off-Reservation projects. The EA must consider the cumulative impacts on traffic and groundwater resources, and a thorough analysis must include all projects that contribute.

Drainage and Water Quality:
The EA must include an inventory of the possible contaminants that may be generated on-site during the construction and operation of the proposed uses; and the direct and cumulative impact to existing water

quality in the region. The EA must also provide information on how the proposed action will affect the beneficial uses of the region's water supply.

Transportation and Circulation:
Appendix I - The EA collected existing traffic volumes in March of 2012 for the roadway segments and intersections. The EA does not address the increase tourism traffic that exists during the summer months. The traffic *analysis* as in all reports by AES, is insufficient.

Chumash Proposed Cooperative Agreement (CA): Enforceable Agreement between the Tribe and County of Santa Barbara:
The Chumash have offered a Cooperative Agreement (CA) to the County of Santa Barbara for 10 years. The proposed CA will pay one million dollars per year limited to10 years in exchange for the County to support their fee to trust project. However, the 1,433 acres if and when transferred into trust will be taken off of the tax rolls into perpetuity. The CA does not include any additional impacts to the County after year 10.

The proposed CA does not address necessary mitigations or services paid for at the expense of all County taxpayers. The CA does not offer mitigation funds for increased needs of services for law enforcement, fire or emergency services, nor does it offer in lieu of taxes for the property or for improvements to the property. Rather, the CA submitted to the County promises *"NO NEW REVENUES"*.

The payment in lieu of taxes in section III that is left blank comes to the tribe from federal and state sources, including the current Indian Gaming Special Distribution Fund (SDF). The California Court has ruled that SDF funds may only be used for gaming related impacts. Is this term in the CA *evidence* that the Tribe intends to use the 1,433 ac. of land for gaming in the future after it is safely in trust? The current SDF funds are inadequate to reimburse county tax payers for the costs of law enforcement, fire and emergency services generated by the Chumash casino development. How could these funds even be considered to offset future impacts?

The CA does not offer monitoring of shared groundwater aquifers, establish threshold of water level declines or ensure that significant declines in groundwater levels do not extend off of the trust lands. It does not offer cooperation or mitigation measures that include a reduction or cessation in on site pumping until water levels in the monitoring wells rise above the thresholds. The CA does not offer an environmental assessment should future developments or land use changes occur. ***Terms such as these are critical in any agreement when land is taken out of the regulatory authority of the state and local government.***

The CA while providing a "Waiver" (Section 12) to the terms of the agreement fails to include the necessary language for a judicially bullet proof waiver. The CA describes but does not provide access to a fair and transparent solution for resolution to disputes in California District Court in Santa Barbara. The "Waiver language contained in this document" is nothing more than an unenforceable promise.[6] This CA may be a good

[6] Federal Indian law drastically affects and changes any contractual agreement. Tribal Governments must pass a resolution to bind it to a contractual agreement. Further when a tribe waives its sovereignty certain criteria must appear in the resolution to ensure it is in effect and operational; (1) The Resolution must agree to address matters arising under the terms of the contract in order to judicially waive the Tribes immunity to civil liability. (2) The Resolution must be adopted in a manner consistent with the Tribes Constitution. If the Tribe Constitution does not address waivers of immunity and some do not, then it will require a vote of the entire tribal membership, in order to waive the tribes immunity to civil liability, (3) The Resolution must identify who is to sign the agreement or authorize the entire Council to sign the Agreement and (4) If the Contract exceeds seven years and limits a tribal government's authority over the use of the land or impairs the title to the land, it then requires a review under USC Section 81 by the Secretary of the Interior. This may require the signature of the Secretary of the Interior. (25 CFR Part 81)

beginning for a negotiation, but commitment and execution is far from complete. ***The CA may require the signature of the Secretary of the Interior in accordance with Part 81.***

Any CA negotiated between a Tribe and a County outside of a tribal state compact requires the County to comply with the California Quality Environmental Act. The County cannot sign an agreement which contains provisions legally binding it to several definite courses of action that involve physical changes to the environment. The County will be required to perform a full EIS in order to enter into a CA with the Tribe. The terms and conditions of such an agreement must be voted on in an open public forum and subject to legal challenge. ***The Tribe must remember these issues are multi-jurisdictional and not just tribal.***

VI. Conclusion

Stand Up For California suggests that the BIA immediately require a full EIS to be prepared for recirculation and review of this proposed fee to trust acquisition under the proper regulation of CFR 151.11, Off Reservation Acquisition. Further, we strongly suggest the BIA and the Tribe withdraw the TCA.

Sincerely,

Cheryl Schmit, Director
916 663 3207
cherylschmit@att.net
www.standupca.org