Stand Up For California!
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October 17, 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: Santa Ynez Band of Mission Indians of the Santa Ynez Reservation
Fee to Trust Land Acquisition Application for 1,427.78[1] 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, 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) for the proposed acquisition. These comments are important and should be fully addressed when evaluating the EA and considering the Chumash application.

Stand Up For California will address each of the criteria in 25 Code of Federal Regulations Part 151.10 and 151.11.

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

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

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.

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 creates what amounts 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 a TCA in an unincorporated area of Santa Barbara County. ***The TCA destabilizes the social, cultural, political and economic systems of the entire region.***

The Chumash and the *BIA are asserting this is an On Reservation acquisition.* There is no statutory or regulatory law, no congressional act or stipulated judgment that supports this to be processed as an On Reservation acquisition. ***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 CFR 151.10.***[2] ***The Application at page 6 of 16 cites, "Thus, the preservation of the tribe's existing land base and the re-acquisition of its traditional lands have always been top philosophical priorities".*** **This is NOT a re-acquisition of former reservation lands, or lands that can demonstrate former Indian title. These are lands 1.6+ miles from the Reservation which was established December 1901 for the Tribe. There are no viable aboriginal land claims in California.**

Stand Up For California respectfully requests the immediate denial of this application or re-submission of an amended application properly identifying the acquisition as an ***off reservation*** acquisition processed under 25 CFR 151.11.

25 CFR 151.11 Off Reservation: considers the factors for an On Reservation acquisition 25 CFR 151.10 (a) – (c) and (e) – (h). However 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. Mr. Sam Cohen the Chumash Legal and Governmental Affairs Consultant has been quoted in the press as stating the

[2] Page 2-1 of the EA: "There are no other available comparable lands that would provide sufficient land base to the Tribe's Tribal Consolidation Area. **In addition lands outside of the TCA would not meet the purposes and would constitute an Off Reservation trust acquisition request."**

TCA is a ***"concept"*** and does not cloud the title of the lands. ***Clearly, a concept is not a mandate for an On Reservation acquisition.***

151.1 (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 government".*** The proposed acquisition of Camp 4 parcels is 1.6+ miles from the reservation boundary. It is noncontiguous.

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 *Patchak Ruling* by the United States Supreme Court.

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. The 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)

The 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. Off reservation acquisitions for gaming must be reviewed through a stringent two part determination process and require the concurrence of the Governor of the State. Paring this phrase with terms in the Chumash Cooperative Agreement offered to the County which includes in lieu of taxes in section III using Special Distribution Funds[3] leads to heighten concerns about a land use that includes gaming.

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;

The BIA and the Chumash assert in the EA and Fee-to-Trust Application that the Camp 4 parcels are to be processed as an On Reservation acquisition. An On Reservation acquisition because of the approved Tribal Consolidation Area (TCA) must be considered a ***"On Reservation acquisition".*** An "On Reservation acquisition" gives very little consideration to the comments of affected local government and little if any to affected citizens. The only consideration that affected community members may receive is through a judicial review of the fee to trust transaction.

[3] SDF funds can only be used to mitigate gaming impacts.

The BIA has approved the first ever TCA in California. The BIA is using the On Reservation regulation 151.10 for the Chumash acquisition of lands within the TCA. Arguably the Camp 4 parcels may meet an exception under Section 20 of the Indian Gaming Regulatory Act (IGRA) (U.S. C. 2719 (a) (1). This transaction becomes a major federal action and requires an Environmental Impact Statement (EIS). The Chumash must comply with the IGRA and its 1999 Tribal State Compact. This application cannot move forward until a complete EIS is prepared and recirculated. *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 Chumash 1999 Tribal State Compact is potentially affected by the On Reservation acquisition within the TCA. 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. This equates to, two events per weekend year round. This raises a number of unanswered questions which heighten public concern and simultaneously ignores terms of the 1999 Tribal State Compact. Will events at the center be ancillary to the Tribes established casino? Will events at the center provide for overflow casino crowds, poker tournaments, high stakes bingo galas, or a ***satellite gaming facility***[4] ?

The Chumash Tribal State Compact permits a second casino or a "gaming facility". (Section 4.2)[5] Part of this land acquisition is a prime location for a casino ancillary development such as a hotel/spa/golf course complex.

The proposed event center could potentially be used in accordance with the 1999 Tribal State Compact as a weekend gaming center *("...any building in which class III gaming activities or gaming operations occur,...)* Chairman Armenta has passionately stated that there will be no *second casino*, but he has not stated that there will be no gaming whatsoever at the Camp 4 location.

The 1999 Tribal State Compact[6] (section 4.2) stipulates that land must meet the standards of *"Indian lands"* under IGRA. *Do the lands within the TCA meet the IGRA threshold for gaming? This question must be answered.* It does not matter that the Chumash have stated that this is a non-gaming acquisition. The Tribe's 1999 Tribal State Compact imposes a requirement

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[4] **Sec.2.8** "Gaming Facility" or "facility" as defined at Section 4.2 of this Compact means **any building in which Class III gaming activities or gaming operations occur,** or in which the business records, receipts, or other funds of the gaming operation are maintained but excluding offsite facilities primarily dedicated to storage of those records, and financial institutions, and all rooms, building, and areas including (but not limited to) parking lots and walkways, **a principal purpose of which is to serve the activities of the Gaming Operation, provided that nothing herein prevents the conduct of Class II gaming (as defined under IGRA) there in. (Emphasis added)**

[5] **Sec. 4.2** Authorized Gaming Facilities. The Tribe may establish and operate not more than two Gaming Facilities, and only on those **Indian lands on which gaming may lawfully be conducted under the Indian Gaming Regulatory** Act. The Tribe may combine and operate in each Gaming Facility any forms and kinds of gaming permitted under law, except to the extent limited under IGRA, this Compact, or the Tribe's Gaming Ordinance.

[6] The 1999 Tribal State Compact expires in 2020 leaving approximately 6+ years. Tribes with 1999 Tribal State Compacts are currently in compact discussions/negotiations with the Governor's office. Terms of a new or amended compact have the potential to affect the Camp 4 Fee to Trust acquisition and its intended land use.

(Section 2.8) that the Fee-to-Trust Application be treated as a gaming application should these lands be determined eligible for gaming. This includes ancillary commercial developments that support or enhance the Tribes established casino operation.

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.

Further, the BIA in its creation of a TCA and asserted On Reservation acquisition of Camp 4 parcels has ignored the statutory limitations of the Consolidation Statute that addresses only the sale of Indian lands within the exterior boundaries of a reservation.

And lastly, 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. ***Development of the TCA is an abuse of the Regional Directors authority. Any decision to approve a fee to trust within the TCA creates irreparable harm.***

III. 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 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 would constitute an arbitrary and capricious action subject to judicial invalidation.

IV. 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 or the 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?

- Will the proposed event center be leased to a gaming contractor or slot contractor, internet gaming contractor?
- 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? Will this be a new pump and play?

The Chumash Fee-to-Trust Application like the EA fails to disclose the total purpose for which this land will be used.

V. 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 isn't, and identify all of the fee land owned by individual Indian members in the Santa Ynez Valley.

VI. 25 C.F.R. 151.10 On Reservation (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 78[7] 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

[7] 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.

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.

VII. 25 C.F.R. 151.10 On Reservation (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. 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?

VIII. 25 C.F.R. 151.10 On Reservation (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 enforce 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 will devalue and make specific properties unmarketable, further creating *irreparable harm without just compensation.* The application does not fully or wholly address or resolve these real and immediate issues.

IX. 25 C.F.R. 151.10 On Reservation (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.)

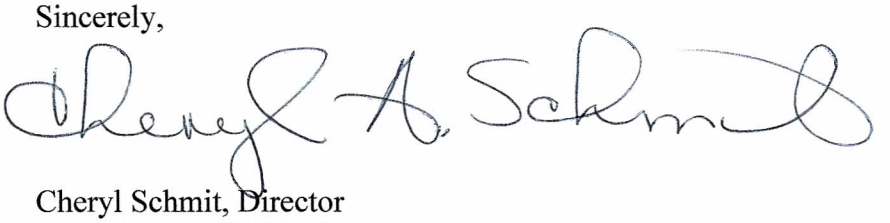
The application did not provide a report nor do we know if a report conforming to 516 DM 6, appendix 4, National Environmental Policy Act Revised Implementing Procedures, and 602 DM 2, Land Acquisitions has been submitted by the Chumash, the BIA or the Secretary of the Interior. Such a report is necessary now considering the Tribal Officials quote regarding the EPA and Army Core of Engineers.

The Camp 4 parcels have been and currently are used for agriculture. DDT and other outlawed pesticides were used regularly in agriculture in the not so distance past. A detailed report of surface and subsurface soil must be completed to prevent homes from being developed on land where still potentially hazardous substances may exist.

X. CONCLUSION:

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

Sincerely,



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