

Stand Up For California!

“Citizens making a difference”

www.standupca.org

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May 27, 2019

Ms. Amy Dutschke
Pacific Regional Director
Bureau of Indian Affairs
2800 Cottage Way
Sacramento, CA 95825
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RE: “DEIS Comments - Tejon Fee-to-Trust-Community Center 10.36 ac.”

Dear Ms. Dutschke,

The following comment is being submitted on behalf of *Stand Up for California* (“Stand Up”) regarding the fee-to-trust transaction of the Tejon Indian Tribe (“Tribe”) for lands in Mettler, Kern County, California, referred to as “Community Center” consisting of approximately 10.36 ac. of land to be taken out of the States regulatory and jurisdictional authority and into trust for the Tejon Tribal Government. Please include this letter as part of the Administrative Record. In October of 2017, the Department of the Interior (“Department”) issued proposed changes to the fee-to-trust process seeking to establish a two-step process to reduce the burden on tribal applicants. Stand Up viewed this effort as a necessary action by the Department to reform the fee-to-trust process providing greater fairness, balance and transparency to all affected parties. While no rulemaking has occurred, this application appears to follow the proposed draft rules.

This transaction creates new trust lands for a Tribe that has identified itself as landless. The purchase of the Community Center property has been made with a Grant from HUD. HUD’s environmental review of this property appears adequate for a non-gaming transaction purchasing and restoring a former school building. Additionally, the School District has a check list for the sale of school property. This environmental review eliminated the sometimes lengthy and costly process for Tribes of complying with the National Environmental Policy Act (NEPA). The planned use of this property is for a non-gaming purpose.

Stand Up recognizes the legitimate need of tribal governments to obtain land for housing and economic development. We appreciate the Tribe’s willingness to negotiate a Memorandum of Understanding (“MOU”) for services on a non-gaming application, particularly since there is no requirement that it do so. The negotiation of a government-to-government agreement between the Tribe and the County of Kern facilitates a relationship in the daily operation of tribal and county government activities. The agreement between the County and the Tribe provides for mediation to resolve differences over amounts of money charged and owed prior to seeking recourse in the State Court system to which the Tribe has waived its defense of sovereign immunity. The twenty year MOU does provide for renegotiation of a termination clause at year 6. It does provide for a traffic study after the facility is in operation. However, the full impacts to the human environment

and civil regulatory issues created off-trust land by on-trust land activity have not been fully identified or considered through a California Environmental Quality Act review.

Often as a consequence of a negotiated and a legislatively approved MOU a trust transaction is fast-tracked without consideration of the terms of the agreement fully addressing environmental and civil regulatory issues. The development of new trust lands affects more than just the fiscal impacts to the local government. The Department review and consideration of the terms of local agreements i.e. MOU's, are not required under the current regulations, but it may be something the Department wishes to consider before a fee-to-trust transaction is fast-tracked.

While this particular non-gaming transaction is for a laudable and beneficial Tribal use, it nevertheless raises complex questions of Indian law, federal and state policy. The Tribe is listed in the Federal Register as one of the 567 federally recognized tribal governments entitled to "*services*" from the Bureau of Indian Affairs,¹ this is not in dispute. However, the manner in which the Tribe achieved its federal status raises complex federal questions. The Tejon Tribe was "reaffirmed" in 2012. "Reaffirmation" is not a process provided for by federal statute or regulation. This issue is further highlighted in the Inspector General's Investigative Report of the Tejon Tribe dated January 9, 2013 and posted on the web April 2013. The Inspector General's report identified other tribal groups some of which submitted letters of intent to process through Part 83. As a consequence, the Bureau of Indian Affairs' reaffirmation of the Tribe creates an unfortunate problem.

The Department of the Interior has previously stated that it was not necessary for the Tribe to go through the federal acknowledgment process under Part 83 because the federal government's relationship with the Tribe was first established in 1851 negotiations of an *unratified* Treaty D. Yet, there is no federal evidence that land in the Mettler area was ever set aside as a recognized reservation. Rather, the Tule River Reservation was established by an executive order in 1873 for several tribes, including the Tejon. The Tule River Indian Reservation is still in existence. So there appears to be some inconsistencies in the Tejon Tribe's narrative regarding its connection to Mettler, CA.

The Department must provide an analysis of whether the Tribe was "*federally recognized and under federal jurisdiction in 1934* under the reasoning in *Carcieri v. Secretary of the Interior*, U. S. Supreme Court Feb. 24, 2009 and/or the M-Opinion: *Reaffirmation of the United States' Unique Trust Relationship with Indian Tribes and Related Indian Law Principles*, issued January 18, 2017.² This issue must be thoroughly addressed prior to and in the Record of Decision. *The Secretary of the Interior lacks the authority to take land into trust for Tribes that do not meet the Carcieri reasoning.*

The Department must address in the Record of Decision whether or not the trust transaction of the "Community Center" will influence the Tribes pending gaming application.³ Perhaps the most troubling question is whether the MOU would enhance the Tejon Tribe's gaming application for a casino in Mettler. In October of 2016, the Bakersfield Press quoted Supervisor Mike Maggard as saying, "I have no qualms in helping the Tribe establish its headquarters and cultural heritage," but Supervisor Maggard questioned whether the agreement would take the County any further toward approving ground for gaming.⁴ Several other

¹ [25 U.S.C. 479a-1](#) Publication of a List of Federally Recognized Tribes

² <https://www.doi.gov/sites/doi.gov/files/uploads/m-37045.pdf>

³ 25 CFR 292

⁴ Bakersfield Newspaper, Casino fears complicate tribe's bid for new home, by James Burger.

http://www.bakersfield.com/news/casino-fears-complicate-tribe-s-bid-for-home/article_92cd8805-47c9-591_a8122-831bf380fd4c.html Article Attached.

Supervisors expressed concern that approving an agreement for a tribal Community Center would affect the County's ability to object to the Tribes gaming proposal in Mettler.

Thank you in advance for your consideration of Stand Up's comments.

Sincerely,



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Casino fears complicate tribe's bid for new home

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BY JAMES BURGER jburger@bakersfield.com October 16, 2016

<http://ireader.olivesoftware.com/Olive/iReader/TBC/SharedArticle.ashx?document=TBC%5C2016%5C10%5C16&article=Ar00609>

Kathryn Montes Morgan went to school at the old Meridian School on David Road near Wheeler Ridge Road from kindergarten to fifth grade.

She's working hard to go back to elementary school.

Morgan is the vice chairman of the 832-member Tejon Indian Tribe, which has purchased her old school and will convert it into the permanent headquarters of the tribe — the first home the tribe has owned in 150 years.

“It is the first step in rebuilding our tribe culturally and spiritually,” she said.

But concerns about the tribe's separate plans for a casino are making things difficult.

PARTNERSHIP

The fact that the Tejon tribe hopes to build a casino on 306 acres of land near Mettler is coloring everything it plans to do.

And it's sparking opposition to all of the tribe's plans.

On Tuesday, Kern County supervisors declined to approve a memorandum of understanding with the tribe, instead pushing for more information, more public participation and a guarantee that the tribe wouldn't allow gambling on David Road.

The agreement would have laid out how the county and tribe would operate side-by-side if the school site became sovereign tribal territory following an extensive state and federal approval process.

The deal would have created requirements for the tribe to pay for building inspections, fire and sheriff's services and other basic day-to-day infrastructure needs.

"Right now, if we were there, and we needed police services and fire services, they would be provided to us for free," Morgan said.

"We want the county to know that we're willing and able to pay for our share."

Such a local deal weighs big for state and federal officials as they contemplate taking land into trust for the tribe — the move that turns the property into part of a tribal nation, said Assistant County Counsel Mark Nations.

"The state requires that the tribe and the local jurisdiction have an agreement that spells out what their relationship is going to be," he said.

That said, the tribe doesn't need the ground to become tribal territory to begin implementing its plans there, he said.

"If the property is never taken into trust, they can still have their tribal headquarters there — they own the land," Nations said.

BACKING AWAY

Only one person spoke in opposition to the plan on Tuesday. Citizen Frank Reina said he was opposed to gambling — not tribal offices.

But supervisors still spooked.

They asked staff to bring the issue back on Nov. 15 with more information, better notices and a chance for more public involvement.

Their worry?

The proposed casino.

"I have no qualm in helping the tribe establish its headquarters and cultural heritage," said Supervisor Mike Maggard.

But he wanted to know if the agreement would take the county any further toward approving ground for gaming.

Nations said there is no way the tribe could get ground for a casino approved by talking about the Meridian School site.

"They can't take the MOU on the David Road to the government to clear the way for the casino project. And if they tried to do that, it would doom the casino," he said.

Supervisor Mick Gleason said he was prepared to vote for the agreement with the tribe Tuesday because the documents supervisors were given made it painfully clear that approving the David Road property would do nothing to clear the way for a casino.

But, he said, Reina's concerns gave him pause.

He's been blasted by opponents of a casino that just got city council approval in his hometown of Ridgecrest because he endorsed the mayor of Ridgecrest — who voted for the casino.

Gleason said he didn't see the nexus between Reina's fear of gaming and the project in front of the board on Tuesday.

But, he said, the fact that Reina didn't understand what was going on troubled Gleason and pushing the vote off for one month was worth it if the public's concerns were alleviated.

Morgan said she understood the board's need for more information and they're happy to take the extra time.

"This is something new for them. They need to do more homework on their side. They need to be educated in the process and the citizens of Kern County need to be made aware," Morgan said.

But one supervisor questioned

the need to wait a month for approval of the tribal headquarters.

The lack of connection to a casino project was obvious, said Supervisor Leticia Perez, and she questioned why her peers were concerned.

"Why is the future project influencing the decision making on this process? I have not seen that before from this board," Perez said. The deal is "an application that is for a community center for one of the most underserved communities in California."

FUTURE

Morgan said the plans to do an environmental report on the 306-acre casino project are still continuing under the auspices of the Bureau of Indian Affairs.

"The needs of our people are great," she said. "This is the fastest way that I can get money to provide for my families."

Right now the hold-up is getting the money to build the environmental report, she said.

But the tribe's headquarters project is moving forward, Morgan said, and the tribe's hopes and dreams for the land are big.

Tribal offices would be there.

But there would also be emergency housing for victims of domestic violence for tribe members who need help getting on their feet.

Part of the property would be used as a repository for tribal artifacts, documents and photographs and other cultural artifacts found on federal lands.

There would be basketball courts, a quad area for smaller children to play and possibly a skate park.

There would be an elders center and a health facility, Morgan said.

But one of the first things that will go in is a sweat lodge so religious services can be held on the property.

OPPOSITION

But outside groups are watching the tribe's progress on both the headquarters and the casino project with deep interest.

Bakersfield political consultant Mark Abernathy, who claims Gleason and Supervisor Zack Scrivner as clients, has organized a group called Kern Families Against Casino Expansion to oppose the casino. The group's website is registered to Abernathy and Gleason said Abernathy has been lobbying against the tribe.

"I know that Abernathy is opposed to casinos — very opposed to casinos. He's going to come out swinging," Gleason said. "He doesn't support what was proposed last week."

Morgan said she and the tribe know they would be opposed and are prepared to deal with the challenge.