

# SANTA YNEZ BAND OF CHUMASH INDIANS

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## SANTA YNEZ BAND OF CHUMASH INDIANS

### COMMENTS ON POTENTIAL REVISIONS

### TO THE TRUST ACQUISITION REGULATIONS AT 25 C.F.R. PART 151

DUE DATE: JUNE 30, 2018

TO CONSULTATION@BIA.GOV

The Santa Ynez Band of Chumash Indians (“Tribe” or “Chumash”) submits the following comments in response to the Department of the Interior’s (Department) December 6, 2017 Dear Tribal Leader Letter (DTLL) proposing a broader discussion on the direction of updates to Part 151.

### **A Brief History of California and the Chumash**

*“**California tribes** that were parties to the 18 treaties negotiated in 1851-52 would have retained 8.5 million acres of their aboriginal homelands had the treaties been honored by the Senate. Then the Senate refused to ratify the treaties and Congress extinguished the California tribes’ land claims in the California Land Claims Act of August 3, 1851, the tribes **lost claims to their entire aboriginal homeland totaling more than 70,000,000 acres. Today the tribal land base in California is just over 400,000 acres (about 0.6% of the aboriginal land base)**, with an additional 63 acres of land held in individual land allotments.” Final Report, Advisory Council on California Indian Policy, Pursuant to P.L. 102-416, Executive Summary, p. 25 (September 1977).*

### **The Need for Adequate Housing**

The existing 144-acre Santa Ynez Chumash Indian Reservation is too small for the development of housing to accommodate our tribe’s 140 members and their descendents who want to live on the reservation. Because much of our reservation contains environmentally sensitive wetlands and a creek bed, building new homes on these areas is not an option – and as a result, overcrowding in our existing housing is one of the greatest challenges facing our tribe and our members. Many are forced to live cut off from their community. That is why the Tribe has purchased 1,400 acres of ancestral land – the old Camp 4 parcel – to meet the Tribe’s need for housing. “Camp 4,” sits just a few miles east of the Chumash Reservation. It was purchased in 2010 to provide housing so that the tribe can meet its housing shortage and live together as a single community. This will allow the Chumash people to live together as tribal families under a

single tribal government. As custodians of the land, the Tribe will be able to ensure that it can take care of generations to come.

### **The Santa Ynez Band of Chumash Indians**

Located on the Santa Ynez Reservation in Santa Barbara County, California, the Santa Ynez Band of Chumash Indians was federally recognized in 1901 and remains the only federally-recognized Chumash tribe in the nation. The Chumash original territory lies along the coast of California, between Malibu and Paso Robles, as well as on the Northern Channel Islands. The area was first settled about 13,000 years ago and at one time, the Chumash had a total population of about 18,000 people.

The Santa Ynez Band of Chumash Indians was eventually relegated to 99-acres which lies entirely in a flood plain, 40 percent of which is within a flood zone. For many years, few tribal members lived on the Reservation since running water and electricity was not made available to our residents. The establishment of indoor plumbing didn't happen on the Reservation until the 1960s. In late 1970s, the first of the Housing and Urban Development (HUD) homes were built and more tribal members were able to move on to the Reservation.

The Chumash people have been associated with the Camp Four property and surrounding territory since time immemorial. In fact, a rich record exists of the Santa Ynez Chumash's historical connections to the Camp Four land. Archaeological evidence supports the area's use by the Chumash people long before contact with the Spanish. This use continued during and after the Mission Period.

The Chumash have long-standing cultural and spiritual ties to the Camp Four property and surrounding area. The legal record - involving actions by the U.S. government, Mexican government, and the Spanish through their Mission outposts - also demonstrates the land tenure history of Santa Ynez Chumash.

The Camp Four property was once part of the lands of Mission Santa Ines. It was part of the subsequent Rancho Canada de los Pinos recognized by the U.S. government. It was close to an individual land grant to a Santa Ynez Indian by Mexican Governor Micheltoarena. All these lands were considered to have been the property of the Santa Ynez Chumash by the Spanish and Mexican governments and the Catholic Church. Even after California statehood, the Catholic Church carried forward this theory of land tenure by the Santa Ynez Chumash.

The Santa Ynez Band of Chumash Mission Indians has clear connections to the Camp Four property based on law and cultural use. Now the tribal government has the opportunity to return the lost land to its jurisdiction and stewardship once more through federal trust status.

### **Land Tenure of the Santa Ynez Chumash Indians**

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The Santa Ynez Chumash, ultimately, ended up with just a sliver of land under its jurisdiction. In 1906, the federal government placed 99 acres into federal trust around Zanja de Cota Creek. Today the Santa Ynez Indian Reservation comprises about 137 acres. This area includes unusable lands such as a streambed and an easement for a state highway that cuts through the reservation.

The acquisition of the 1,390 acres of the Camp Four property from the late Fess Parker represents an opportunity for the Chumash people to return a small portion of their historical territory to their stewardship. The goal is to create a tribal community on the land by building homes for tribal families. This also will help relieve overcrowded conditions on the present reservation, where much of the housing stock was built through HUD low-income grant programs.

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### **The Mission Era**

The Chumash historically occupied an area from Morro Bay to the north, Malibu to the south, Tejon Pass to the east (what is now called the "Grapevine") and the four Northern Channel Islands. In prehistoric times the Chumash territory encompassed some 7000 square miles. Today, this same region in Southern Central California takes in five counties including Santa Barbara, Ventura, San Luis Obispo, Los Angeles, and Kern. An elaborate Chumash trail network linked

several hundred early Chumash villages and towns, seasonal encampments, rock art sites, shrines, gathering places and water sources. These trails were vital to sustaining cultural longevity for over 8,000 years in this region as they formed the foundation for economic and social exchange among the Chumash.

The Chumash numbered over 25,000 people on the eve of the first Spanish land expedition in 1769. This scouting trip by Portolá led to the founding of five Catholic missions in the Chumash territory beginning in 1772; with Mission Santa Inés the last to be built in 1804.

In a period of seven decades, the once thriving population of 25,000 Chumash drastically declined to 1,200 people. After secularization of the missions in 1833, the Chumash population in the Santa Ynez River area alone, including today's Lake Cachuma, Mission Santa Inés, Mission La Purisima Concepción and the Lompoc Coast, severely declined to only 455 Indians.

The Spanish built five Catholic missions among the Chumash people. Mission Santa Ines was established in 1804 as a halfway point between the Santa Barbara and La Purisma (Lompoc) missions. Each mission was granted about seven square leagues of land surrounding it for the use and support of the local Indian communities. That would have given Mission Santa Ines more than 441 square miles of land.

In practice, the missionaries and soldiers were brutal men who enslaved the local Chumash people and nearly decimated them through disease, starvation and harsh treatment. Despite this, the sentiment of the Spanish and Mexican governments and the Catholic Church was that the land of the missions essentially were what we know of today as reservations, for the use and upkeep of the Indians. The tribal members forced to live and work near the missions were considered to be neophytes or Christianized Indians.

The Church viewed the land to be held in trust for the Indians, who had a "natural" right of occupancy. The Church and Spain considered title to the land to be with the Indians as decreed from the "laws of nature and imminent occupation." The priests were just the administrators of the land on behalf of their Indian "wards."

Or put another way, the mission activity wasn't accompanied by a conveyance of land to the missions themselves. Under the Spanish theory of colonization, the mission establishments weren't intended to be permanent. Notes one text on land in California: "When the Indians were Christianized and civilized, the mission settlements were to become pueblos. They were always subject, therefore, to secularization, that is, subject to being turned over to lay administration ... The missions were permitted, under the Spanish and Mexican governments, to occupy and use

certain lands *for the benefit of the Indians*, but not to own them. They were, in effect, trustees only.”

The slave-like conditions at the mission led to the Chumash Revolt of 1824. It started when soldiers flogged an Indian from La Purisma mission who was at Santa Ines. The revolt spread to the Santa Barbara and La Purisma missions and led to the burning of the Santa Ines mission. Many Chumash feared the soldiers would kill them and fled to the San Joaquin Valley. The priests and military knew they couldn't keep the missions going without the Indian slave labor. Soldiers rounded up the Chumash and brought them back to the mission.

A decade after the revolt, the Mexican government secularized the missions and intended to disperse the lands to the Indians and settlers. The goal never was fully accomplished. The missionaries still were regarded as the guardians of the Indians and the tribal lands.

Many Chumash after the secularization efforts did flee the mission and ended up in the area around Zanja de Cota Creek in the Canada de la Cota. The area still was considered to be within the lands of the Catholic Church.

### **The Treaty of Guadalupe Hidalgo**

In the aftermath of the Mexican-American War in 1848, the United States acquired the California territory as part of the Treaty of Guadalupe Hidalgo. An interesting aspect of the Treaty was that the United States agreed to respect the land claims and rights of the Native Americans already living in California on the land they physically occupied.

### **The 18 Unratified California Treaties**

Statehood for California in 1850 ushered in new attempts to deal with the Chumash land. The United States and California began addressing land claims and Mexican land grants that arose from the Treaty of Guadalupe Hidalgo.

Indian Commissioners were sent to California to remove the California Native Americans from the lands they “physically occupied” and create the first reservations. In reliance on the Treaties, the California Indians abandoned much of their aboriginal lands and began withdrawing to their new treaty lands. However, unbeknownst to the California Tribes, the California delegation in Congress was busy lobbying against ratifying the Treaties.

Instead of just not ratifying the Treaties, Congress went one step further. By secret joint resolution, Congress agreed not to ratify the California Treaties and to formally “hide” them for 50 years. The net effect of this deception was to open up California for settlement, as the Native Americans were no longer physically occupying the land and yet give the Tribes no reciprocal rights to any reservations whatsoever.

Between April 29, 1851 and August 22, 1852, a series of eighteen treaties "of friendship and peace" were negotiated with a large number of what were said to be "tribes" of California Indians by three treaty Commissioners (George W. Barbour, Redick McKee and O. M. Wozencraft) whose appointments by President Millard Fillmore were authorized by the U.S. Senate on July 8, 1850. Eighteen treaties were made but the Senate on July 8, 1852 refused to ratify them in executive session and ordered them filed under an injunction of secrecy. The texts of these 18 unratified treaties were made public on January 19, 1905 at the order of the U. S. Senate which met in executive session on that day in the Thirty-second Congress, First Session.

Robert F. Heizer, THE EIGHTEEN UNRATIFIED TREATIES OF 1851-1852 BETWEEN THE CALIFORNIA INDIANS AND THE UNITED STATES GOVERNMENT (1972), reprinted at <http://www.maidu.com/maidu/maiduculture/bibliography/historyofthe18.html>

### **Mission Indian Relief Act of 1891**

In 1891, Congress passed the Mission Indian Relief Act designed to help those Indians who had been associated with and enslaved by the missions. Many of these communities were destitute because their land had been taken away from them. In fact, much of the land these Indians had lived and worked on was lost through the land claims settlement process. The government later gave it to settlers.

Congress deployed a commission to investigate the conditions of the Mission Indians. One goal was to help them settle on reservations created by the United States, rather than on the lands held by the missions.

The Smiley Commission found that the Santa Ynez Indians were primarily living in a village around the Zanja de Cota Creek area on lands they had moved to around 1835 after the secularization of the missions.

But the Chumash land was caught in a legal paradox.

The Commission determined that abundant evidence existed to validate the Chumash's long period of occupancy of the mission lands. But the Commission could not support creating a federal reservation through the legal theory of adverse possession. Why? Because the bishop's earlier petition stated that the Church had long considered the mission lands to be "owned" by the Chumash.

The Chumash could not be considered to have been in adverse possession of the land - even though the previous Land Claims Commission denied their land claims.

### **Church lawsuit**

The Smiley Commission developed a different approach. The federal government began negotiating with the Catholic Church to obtain federal trust lands for the Santa Ynez Chumash.

Part of this scheme involved the Bishop of Monterey filing a lawsuit against individual Santa Ynez tribal members in a quiet title action. With U.S. government support through the approval of the local Indian agent, the bishop commenced a quiet title claim. The action concerned about 11,500 acres of the Rancho Canada de los Pinos, or the College Rancho.

The action was necessary because, at least according to the position held by the bishop in his petition to the Land Claims Commission, the Church actually held the lands around the mission in trust for the Chumash. The negotiations and quiet title action resulted in an agreement in which the bishop would convey some land to the federal government for a reservation for the Santa Ynez Band of Chumash Mission Indians.

Once again, the Santa Ynez Chumash continued to assert their right of occupancy and possession to a much larger area than was discussed in negotiations.

At various times, parcels of land ranging from 5 acres to 200 acres were proposed as the property to be deeded to the United States for the Santa Ynez Chumash. Each of these proposals represented areas that were significantly less than the original mission lands (held for the local Chumash), the Rancho Canada de los Pinos (the mission lands as reconfigured by the United States), and even the combined total of the Santa Ynez individual land grants.

Ultimately, what was transferred to the United States to be held in trust for the tribe was just 99 acres, a tiny fraction of the 11,500 acres of the Rancho Canada de los Pinos that had been that had been given up without Chumash consent.

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individual land grant to a Santa Ynez Chumash Indian by Mexican Governor Micheltoarena. All these lands were considered to have been the property of the Santa Ynez Mission Indians by the Spanish and Mexican governments and the Catholic Church. Even after California statehood, the Catholic Church carried forward this theory of land tenure by the Santa Ynez Chumash.

The Santa Ynez Band of Chumash Mission Indians has clear, deep connections to the Camp Four property based on law and cultural use. Now the tribal government has the opportunity to return the lost land - that it has had to purchase back - to its jurisdiction and stewardship once more through federal trust status. Anything less would constitute a second unjust taking of the land.

### 10 QUESTIONS & ANSWERS

The most recent DTLL includes 10 questions for tribal comment. The Tribe responds as follows:

1. WHAT SHOULD THE OBJECTIVE OF THE LAND INTO TRUST PROGRAM BE? WHAT SHOULD THE DEPARTMENT BE WORKING TO ACCOMPLISH?

The Department's current land acquisition policy contemplates broad flexibility for acquiring land. 25 C.F.R. Part 151.3, *Land Acquisition Policy*, states land in trust applications must be approved by the Secretary and made pursuant to an authorizing act of Congress (often the act cited for acquisitions is the IRA). Further, subsection (a) of that Part addresses land acquired in trust for a tribe, and subsection (b) addresses land acquired in trust for an individual Indian.

With respect to land acquired for a tribe, the regulations list three categories of acquisitions:

- 1) When the property is located within the exterior boundaries of the tribe's reservation or adjacent thereto, or within a tribal consolidation area; or
- 2) When the tribe already owns an interest in the land; or
- 3) When the Secretary determines that the acquisition of the land is necessary to facilitate tribal self-determination, economic development, or Indian housing.

25 C.F.R. § 151.3. In other words, off-reservation acquisitions must be made pursuant to lawful statutory authority, and where either: the tribe owns an interest in the land; or the Secretary determines the land acquisition is "necessary to facilitate tribal self-determination, economic development, or Indian housing." *Id.* at (a)(2)-(3). The Tribe supports this approach. It makes sense that when a tribe acquires an interest in land the Department should move swiftly when requested to acquire that interest in trust on behalf of the tribe.

Internally, the Department should work to prioritize fee to trust applications through this Administration's policies toward Indian tribes. This would include providing the necessary resources and tools to the Regions, working directly with tribal applicants, and providing proper training in trust land title review to the Solicitor's Office where needed. Often times, when tribes



discuss trust acquisitions, they find that different BIA Regions and Solicitors Offices will have inconsistent approaches to the regulations and NEPA requirements for instance. The Department should strive for more uniformity, and should also look to the Regions that process trust acquisitions most efficiently to help develop guidance and training.

2. HOW EFFECTIVELY DOES THE DEPARTMENT ADDRESS ON-RESERVATION LAND-INTO-TRUST APPLICATIONS?

The Department's on-reservation trust acquisition process is sufficient. Tribes appreciate the consideration of contiguous lands as on-reservation acquisitions and encourage the Department to continue treating contiguous lands in that manner.

In addition, former treaty lands (including the 18 unratified California Treaties), as well as ancestral and traditional homelands should be treated as on-reservation acquisitions as well. Tribes in each region have been devastated by past federal land policies that displaced them from their ancestral homelands in favor of non-Indian settlement. While these policies cannot be reversed and tribes made whole, the fee-to-trust process functions as a tool for tribes to rebuild their homelands and recover from land policies that failed American Indians and Alaska Natives.

The review under the National Environmental Policy Act (NEPA) is perhaps one of the most costly and time-consuming facets of on-reservation acquisitions and the Department should explore ways to streamline this process, including categorical exclusions if possible. Also, where the Tribe is already approving its own leases under the Helping Expedite and Advance Responsible Tribal Home Ownership (HEARTH) Act, or otherwise under Title II of the Indian Trust Asset Reform Act (ITARA), it should be able to use its Department-approved environmental review process in lieu of federal environmental review for on-reservation trust applications as well.

Further, there should be an automatic presumption favoring acquisition of on-reservation lands, rather than a tribe needing to prove a need and purpose for the land as with respect to off-reservation acquisitions. This would rightfully favor tribal civil regulatory jurisdiction and help streamline on-reservation acquisitions.

3. UNDER WHAT CIRCUMSTANCES SHOULD THE DEPARTMENT APPROVE OR DISAPPROVE AN OFF-RESERVATION TRUST APPLICATION?

Such as with the Chumash purchase of Camp 4, when a tribe purchases lands in their ancestral territory, and involves tribal housing, the application should be fast tracked for approval. This is consistent with the current regulations, as discussed above, which state that land should be acquired in trust where: (a) there is statutory authority to do so; and (b) if off-reservation, where either the tribe owns an interest in the land; or the Secretary determines the land acquisition is "necessary to facilitate tribal self-determination, economic development, or Indian housing." 25 C.F.R. § 151.3 (a)(2)-(3).

Further, where the Tribe and the state and local governments collectively support the acquisition, it should be fast tracked for approval.

4. WHAT CRITERIA SHOULD THE DEPARTMENT CONSIDER WHEN APPROVING OR DISAPPROVING AN OFF-RESERVATION TRUST APPLICATION?

The Department should continue to use the same criteria for consistency purposes. The existing regulations have been in place for some time now and the Regions and tribes have grown comfortable with their processes and requirements.

In short, tribes do not need additional changes to an already complicated system unless those changes are truly going to advance trust acquisitions quickly and more efficiently. If so, NCAI offers the following suggestions for the Department to consider – and again, as stated above, we recommend that such changes could be accomplished through amendments to the BIA's Fee to Trust Handbook and not through regulatory changes.

*a. The Department Should Take into Consideration Historical Circumstances of Applicant Tribes*

The Department should consider the historical circumstances of the applicant tribe. For instance, as noted in the Sacramento consultation, California Indian tribes have spent most of the last century recovering from unfortunate federal land policies that devastated their land bases, severely affected their communities, and in turn significantly limited their economic opportunities. A representative from the California Fee to Trust Consortium noted how in California there are 110 tribes with a cumulative land base of 531,000 acres of trust land, but that 95 of those tribes have very small land bases collectively making up 200 acres of trust land. In addition, much tribal land in California is located in remote locations not conducive to economic development.

These facts underscore the unique land needs of California Indian tribes with respect to their current land bases and their ancestral homelands. If a tribe purchases land within its ancestral homelands, the application should receive little scrutiny from the Department.

The Department can use its authority under the IRA to actively help redress these past wrongs. The notion that such occurrences occurred long ago and are somehow less relevant respectfully lacks merit. The Chumash urge the Department to develop its land acquisition policies with these failed federal land policies in mind.

*b. The Department Should Consider the Unique Issues Facing Land Locked Tribes with Little or No Options for On-Reservation or Contiguous Land Acquisitions, and Tribes with No Formal Reservation*

Chumash on Reservation trust land are surrounded by private land owners who refuse to sell so-called contiguous lands to the Tribe making the Chumash land locked and unable to acquire contiguous or otherwise on-reservation lands.

With non-Indian landowners having acquired all contiguous lands, and refusing to sell to the Tribe without making demands for extortionate prices, it is imperative that the Tribe acquire off-reservation lands to meet its governance needs. In addition, the surrounding community has a long history of interfering with tribal self-governance. The Department should support tribal self-governance, and push back against non-tribal entities asserting indirect regulatory control over tribes through the fee to trust process.

c. *The Department Should Consider Tribal Economic Development & Geographical Challenges*

The Chumash have already explained about its geographically challenged land base, and consistently has a waiting list for tribal housing since its current lands are only a fragment of Chumash ancestral lands.

The Department's earlier approach to this effort (*See* DTLL from 10.4.2017) seems based in an assumption that current on-reservation lands are enough for tribes, and that the need for off-reservation lands are limited. However, there are numerous examples like with the Chumash that prove that off-reservation land acquisitions are a bona fide necessity in Indian Country. The Department has a trust responsibility to assist tribes in meeting their governance needs, which includes addressing current on *and* off reservation land needs.

5. SHOULD DIFFERENT CRITERIA AND/OR PROCEDURES BE USED IN PROCESSING OFF-RESERVATION APPLICATIONS BASED ON:

- a. Whether the application is for economic development as distinguished from non-economic development purposes (for example Tribal government buildings, or Tribal healthcare, or Tribal housing)?
- b. Whether the application is for gaming purposes as distinguished from other (non-gaming) economic development?
- c. Whether the application involves no change in use?

With respect to 3 (a), (b), and (c) we submit that these questions are largely NEPA questions. The NEPA analysis must analyze the proposed use and determine whether there are any significant effects to the human environment which would affect Interior's decision to acquire the land in trust status. That being said, the NEPA analysis for (a) and (b) are sometimes time-consuming, and rightfully so depending on the multiple factors involved in those types of uses. However, depending on the land use at the time of the request for trust status, (c) could often qualify for categorical exclusions thereby reducing the costs associated with NEPA compliance and significantly speeding up the acquisition process.

However, if Interior is considering changes to this framework, it should strike the current language at 25 C.F.R. § 151.11(b) and replace it with explicit language that states that "as the intended economic benefits of the acquisition to the Tribe increase, the Secretary will give lesser weight to concerns raised pursuant to paragraph (d) of this section." This would be consistent with Interior's trust relationship to Indian tribes, BIA's policy of promoting greater economic sufficiency for Tribes, and the congressional intent of the Indian Reorganization Act. Further, as Tribes are growing their citizenry, the federal budget supporting Indian Affairs has remained relatively stagnant. For this reason, Interior should strongly support any efforts to bolster tribal economies, including championing trust acquisitions, both on-reservation and off-reservation, that help tribal economies.

If Interior is unwilling to remove distance as a criterion, it should at least consider amending 25 C.F.R. § 151.11(b) to remove the language stating the “Secretary shall give greater scrutiny to the tribe’s justification” as distance increases, as follows:

(b) The location of the land relative to state boundaries, and its 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 weight to the concerns raised pursuant to paragraph (d) of this section.

In consideration of Interior’s trust responsibility to Tribes, and the BIA’s policy toward promoting self-determination and strong tribal economies, Interior should never deter from its policy of promoting stronger economies of tribes under any circumstances. By stating that as the distance of an acquisition from a Tribe’s homeland increases, its economic justification for the project will face more scrutiny and second-guessing, Interior creates a framework where tribal economic development projects become arguably less relevant as the distance increases from their homelands. Sometimes, for instance, a tribe may receive lands through gift or donation, which are situated further from the tribe’s reservation than usual off-reservation acquisitions, but still present great economic opportunities for the tribe. In these instances, the tribe’s proposed land use should not be any less relevant if it helps to supplement dwindling federal resources in any way.

6. WHAT ARE THE ADVANTAGES/DISADVANTAGES OF OPERATING ON LAND THAT IS IN TRUST VERSUS LAND THAT IS OWNED IN FEE?

This question is not helpful to the Department’s understanding of this issue. It seems to conflate a tribal lands issue that is outside the scope of the Part 151 process. For this reason, we do not address this question.

7. SHOULD PENDING APPLICATIONS BE SUBJECT TO NEW REVISIONS IF/WHEN THEY ARE FINALIZED?

No, but tribes should be given the option to proceed under any new revisions if they wish. In most circumstances tribes have already placed significant effort, time, money and other contributions into existing applications submitted under the current regulations and thus should not be expected to begin anew under future revisions.

8. HOW SHOULD THE DEPARTMENT RECOGNIZE AND BALANCE THE CONCERNS OF STATE AND LOCAL JURISDICTIONS? WHAT WEIGHT SHOULD THE DEPARTMENT GIVE TO PUBLIC COMMENTS?

First, we note that the IRA does not require that the Secretary balance the concerns of state and local jurisdictions. However, with respect to this question, we feel the current regulations adequately address the concerns of state and local jurisdictions, and the concerns of the public as well. As many tribes stated, it would be a serious mistake to afford increased input to state and local jurisdictions and the public with respect to tribal trust acquisitions.

Current regulations already require Interior to actively engage with state and local governments to solicit comments on a trust acquisition's potential impact on their respective regulatory jurisdiction; real property taxes and special assessments. 25 C.F.R. § 151.11(d). This process is sufficient to address pertinent concerns by state and local governments, and also to adequately address the interests of the citizens which they represent. In addition, any necessary environmental review under NEPA is subject to public comment and such comments are subject to meaningful consideration by Interior.

Further, tribes expressed concern that state and local governments, if afforded increased input in the process, would not act in good faith. In most instances, tribes have purchased valid legal title to the land from a willing seller and should not be hamstrung from asserting full regulatory authority over the land if the applicant tribe deems it in its best interest to do so.

9. DO MEMORANDA OF UNDERSTANDING (MOUs) AND OTHER SIMILAR COOPERATIVE AGREEMENTS BETWEEN TRIBES AND STATE/LOCAL GOVERNMENTS HELP FACILITATE IMPROVED TRIBAL/STATE/LOCAL RELATIONSHIPS IN OFF-RESERVATION ECONOMIC DEVELOPMENTS? IF MOUs HELP FACILITATE IMPROVED GOVERNMENT-TO-GOVERNMENT RELATIONSHIPS, SHOULD THAT BE REFLECTED IN THE OFF-RESERVATION APPLICATION PROCESS?

MOUs are the prerogative of the sovereign entities involved, and to require a showing of an MOU would be paternalistic and potentially creates an effective veto for state and local governments over trust acquisitions.

In addition, tribes go through the long process of executing an MOU only to get sued on their projects anyway; and also that sometime after an executed MOU, state or local leadership changes and the MOU is no longer the prerogative of the newly seated leadership placing the tribe back at square one.

That being said, the Department has clarified that it does not intend to create a veto situation by referencing MOUs in this process but is instead trying to pinpoint showings that would expedite applications. This sentiment is appreciated, however, any mention of MOUs in the Part 151 regulations will be seized upon by those opposed to trust acquisitions and will lead to administrative and court challenges which may not bode well for tribes.

If the Department is still considering this idea, despite the overwhelming opposition from tribes, it should be placed in internal guidance, such as the existing BIA Fee to Trust Handbook, and not in amendments to the regulations. This approach would address the Department's intent without creating additional fodder for legal challenges from entities opposed to tribal trust acquisitions.

10. WHAT RECOMMENDATIONS WOULD YOU MAKE TO STREAMLINE/IMPROVE THE LAND-INTO-TRUST PROGRAM?

The April 2017 Departmental memorandum removing off-reservation land acquisitions from the BIA Regions and transferring those decisions to Central Office should be rescinded. The local BIA Realty offices know their tribes the best, as well as the surrounding communities. For this reason, it makes the most sense to allow the Region to continue to process such applications. In

this manner, Department headquarters can focus its efforts on the small number of acquisitions that are out of the ordinary, or otherwise controversial in nature.

The Department should refrain from making any changes to the current *Carciari* M-opinion. While the M-opinion adds an additional layer of review for certain applications, it is a necessary tool in light of the *Carciari* opinion and is a good example of how the Department can actively engage with tribes to fulfill the trust responsibility.

The Department should not reinstate the 30-day stay period between when a decision is made to acquire land in trust and when the Department actually acquires the land in trust. As stated repeatedly across Indian Country, this policy frustrates tribal interests by encouraging often frivolous challenges to trust acquisitions that take years to resolve, all the while keeping the land out of trust and subjecting the tribe to state and local taxes throughout the duration of the challenge.

The Department should consider adding an additional CATEX to its *Land Conveyance and Other Transfers* CATEX list, which would address instances where the intended land use is for conservation purposes. In other words, the purpose would be to manage the land to preserve its historic significance, which typically includes conservation of native flora and fauna. The existing CATEX “where no change in land use is planned” may not reach far enough to address instances where tribes need to actively manage land for conservation purposes, and where they previously did not undertake such management. Such use would arguably be a “change in land use” and therefore fall outside the scope of existing CATEXs. This could include sacred sites protection and cultural preservation as well.

Also, BIA may consider adding a CATEX for instances where the tribe’s development plans have been approved by local zoning jurisdictions as consistent with surrounding land use criteria. If a tribe seeks to develop its land in a similar or like manner as surrounding businesses or landowners, federal environmental review should encourage the tribe’s efforts to work with local regulatory bodies. Further, in such instances, federal environmental review should not work to frustrate tribal development plans.

In addition, the BIA may consider adding a CATEX for instances where there would be “minimal change in land use, such that the impacts on the human environment would not be significant or otherwise adverse.” For instance, if a tribe acquires land which had already historically been used as a hiking trail and valued for its scenic beauty—yet poorly managed, and the tribe intends to improve trails and trail markings, increase accessibility and use, and otherwise improve the conditions of the acquisition.

Finally, with respect to CATEXs, BIA should consider a CATEX for instances where the tribe acquires land for consolidation purposes within the boundaries of the reservation. In these instances, the Department should move swiftly to acquire the land in trust for the benefit of the tribe. Most tribes have suffered devastating land loss, and the long-term adverse consequences of land loss, such as land fractionation, poor land conditions, challenging economic development opportunities, and inadequate land holdings to support a tribal homeland. This history is always a critical backdrop to land acquisitions. Moreover, the fact that Congress has spoken to the problem, and through section 5 of the IRA has provided a mechanism to remedy the tribal loss of lands and rebuild tribal economic life, provides a guiding policy principle to inform trust acquisitions

decisions. Further, on-reservation acquisitions usually arise within a context where the choices are limited to continued agriculture or eventual conversion to housing. So long as the tribe holds clear title, the decisions are virtually foreordained. The BIA could provide a CATEX for land consolidation purposes within reservation boundaries, and save a great deal of time, effort and money on NEPA evaluations that serve little purpose.

Next, gaming considerations do not belong within the fee to trust regulations. The Indian Gaming Regulatory Act, at Section 2719(c), states “Nothing in this section shall effect or diminish the authority and responsibility of the Secretary to take land into trust.” Any addition of gaming considerations into the fee to trust regulations at Part 151 would amount to a violation of this provision of IGRA.

#### CONCLUSION

In closing, we thank you for the opportunity to submit these comments on behalf of the Chumash. We appreciate the Department’s willingness to engage with tribes and we reiterate our request that this regulatory process be formally withdrawn due to the overwhelming opposition by tribes. In the alternative, we ask that the Department place this exercise on pause until the new AS-IA has been confirmed by the Senate, has had the opportunity to meet with tribes, and has developed her own initiatives for Indian Affairs. Finally, we recommend that any suggestions herein or otherwise be developed as internal guidance – perhaps as amendments to the already existing BIA Fee to Trust Handbook, instead of through regulatory revisions. We thank you again for your consideration and please feel free to contact me or Sam Cohen, Government Affairs and Legal Officer, at (805) 688-7997 or [scohen@sybmi.org](mailto:scohen@sybmi.org) if you need any additional information.

Sincerely,



Kenneth Kahn  
Tribal Chairman