

October 3, 2013

Amy Dutschke, Regional Director
Bureau of Indian Affairs (BIA)
Pacific Regional Office
2800 Cottage Way
Sacramento, ca. 95825

SUBJECT: Comment, Environmental Assessment, Santa Ynez Band of Chumash Mission Indians, "Camp 4", approximately 1,400 acres, Santa Ynez, Ca. fee-to-trust.

Dear Ms. Dutschke,

Preservation of Los Olivos, P.O.L.O., is a grass roots citizen group in the Santa Ynez Valley representing approximately 1,000 people. P.O.L.O. has appeared as an interested party in BIA and IBIA cases, and has commented on many issues regarding BIA decision-making that is aggressively promoting expansion of Tribal land into federal trust. The BIA's expansion of Tribal land into federal trust is of critical importance to our community, and communities throughout the United States. Tribal governments claim that when land is in federal trust it is outside local and state jurisdiction and taxation. Tribal government leadership is not accountable to the non-Indian community - the non-Indian community does not elect them - yet their decision-making impacts the community.

Impacts of placing land into federal trust include public health, safety and welfare, property values, and also taxation. Tribal businesses on land in trust are not subject to taxation. Consequently, expansion impacts such as crime, water usage, road repair and school funding are paid for by the taxpayer. In addition, even Tribes with casinos generating hundreds of millions of dollars in revenue receive federal subsidies from taxpayer dollars.

The BIA has consistently ignored these impacts on communities.

Please refer to www.polosyv.org for our Mission Statement and for documents demonstrating P.O.L.O.'s longstanding involvement with this issue. In particular, refer to P.O.L.O.'s Written Statement for the Record submitted to the United States House of Representatives House Resources Committee Subcommittee on Indian and Alaska Native Affairs, July 22, 2011.
(<http://www.polosyv.org/images2/pages/index/POLOCongressmanYoung4.pdf>)

P.O.L.O. is now taking this public comment opportunity to *request an Environmental Impact Statement, and referral to an outside agency for its review.*

P.O.L.O. will document that the Environmental Assessment, Santa Ynez Band of Chumash Mission Indians, "Camp 4", approximately 1,400 acres, Santa Ynez, Ca. is inaccurate, incomplete and fails to address many issues that will negatively impact the public health, safety and welfare, and private property values. These comments do not include every impact, and they are not intended to limit comments on any future documents regarding "Camp 4", including future Environmental Impact Studies.

The purpose of the Environmental Assessment (EA)

[\(http://www.epa.gov/Compliance/basics/nepa.html#requirement\)](http://www.epa.gov/Compliance/basics/nepa.html#requirement)

The Council on Environmental Quality (CEQ) coordinates Federal environmental efforts and works closely with agencies and other White House offices in the development of environmental policies and initiatives. CEQ was established within the Executive Office of the President by Congress as part of the National Environmental Policy Act of 1969 (NEPA) and additional responsibilities were provided by the Environmental Quality Improvement Act of 1970.

The NEPA process consists of an evaluation of the environmental effects of a federal undertaking including its alternatives. There are three levels of analysis: categorical exclusion determination; preparation of an environmental assessment/finding of no significant impact (EA/FONSI); and preparation of an environmental impact statement (EIS).

An EA is described in Section 1508.9 of the CEQ NEPA regulations. Generally, an EA includes brief discussions of the following:

- The need for the proposal
- Alternatives (when there is an unresolved conflict concerning alternative uses of available resources)
- The environmental impacts of the proposed action and alternatives

A listing of agencies and persons consulted.

Federal Agency Role

The role of a federal agency in the NEPA process depends on the agency's expertise and relationship to the proposed undertaking. The agency carrying out the federal action is responsible for complying with the requirements of NEPA.

- **Lead Agency:** In some cases, there may be more than one federal agency involved in an undertaking. In this situation, a lead agency is designated to supervise

preparation of the environmental analysis. Federal agencies, together with state, tribal or local agencies, may act as joint lead agencies.

- **Cooperating Agency:** A federal, state, tribal or local agency having special expertise with respect to an environmental issue or jurisdiction by law may be a cooperating agency in the NEPA process. A cooperating agency has the responsibility to assist the lead agency by participating in the NEPA process at the earliest possible time; by participating in the scoping process; in developing information and preparing environmental analyses including portions of the environmental impact statement concerning which the cooperating agency has special expertise; and in making available staff support at the lead agency's request to enhance the lead agency's interdisciplinary capabilities.
- **Council of Environmental Quality (CEQ):** Under Section 1504 of CEQ's NEPA regulations, federal agencies may refer to CEQ on interagency disagreements concerning proposed federal actions that might cause unsatisfactory environmental effects. CEQ's role, when it accepts a referral, is generally to develop findings and recommendations, consistent with the policy goals of Section 101 of NEPA.

P.O.L.O. requests that the BIA relinquish its role as lead agency regarding this EA to an alternate agency, including but not limited to the Council of Environmental Quality, that will provide objective decision-making on this Environmental Assessment to ensure that the rights of all people are represented, for the following reasons:

1. The Bureau of Indian Affairs is inherently biased towards decision-making favoring people of Indian descent.

"The Bureau of Indian Affairs' (BIA) mission is to "... enhance the quality of life, to promote economic opportunity, and to carry out the responsibility to protect and improve the trust assets of American Indians, Indian tribes, and Alaska Natives."

Pepperdine Law Review, 12-15-2012, "Extreme Rubber Stamping: The Fee-to-Trust Process of the Indian Reorganization Act of 1934"

"Most significantly, 100% of the proposed fee-to-trust acquisitions submitted to the Pacific Region BIA from 2001 through 2011 were granted.¹⁸³ Additionally, across all 111 decisions, the Pacific Region BIA did not conclude that a single factor weighed against acceptance of the land into trust. This resulted in a total of 10,538.03 acres being accepted into trust for individual Indians and tribes in California over that period." (page 278)(Appendix A or go to:

<http://digitalcommons.pepperdine.edu/cgi/viewcontent.cgi?article=1727&context=plr>)

NEPA requires that the lead agency take a "hard look" at the environmental

consequences before proceeding. The BIA may be unwilling or unable to require full compliance with NEPA because to do so would be incompatible with its mission to protect and fully support tribal economic development.

This Environmental Assessment is inaccurate and incomplete. An Environmental Impact Statement is warranted for the following reasons:

1. Once in federal trust, the use of the land can be changed. 25 CFR Part 151 does not authorize the Department of the Interior to impose restrictions on a Tribe's future use of land that has been taken into trust. In a 2008 letter from then Assistant Secretary of Indian Affairs, Carl J Artman: "In addition, the Department has been reluctant in the past to take any action to eliminate the flexibility that Indian tribes enjoy to change the use of lands both because it is an aspect of tribal sovereignty, and because it is a needed tool to adapt to changed economic conditions." (Appendix B or go to: http://www.polosyv.org/hotTopics/pdf/DOI_to_Congressman_Hunter-no_restrictions.pdf)

The Secretary would have to approve any restrictions or encumbrances on the land and there are no such Secretarial approved restrictions. (Appendix C or go to: http://www.polosyv.org/images2/pages/index/2005_oic_opinion.pdf)

NEPA requires that all foreseeable uses be considered. Since the Department is taking the position that development on land in trust is outside State jurisdiction, then an EA or EIS must consider all possible development. Development on the 1,400 acres, an area the size of the adjacent city of Solvang, could include a second Casino (as allowed by their Tribal State Gaming Compact), a power plant, massive commercial development, or thousands of homes. This EA fails to address all foreseeable uses.

2. The EA fails to address the impact of the "TCA"; its parameters and conclusions are based on this land falling in a Tribal Consolidation and Acquisition Area. Paragraph 1 of the Introduction of the EA states the following: "The land proposed for trust acquisition, which is known as the Camp 4 site and is currently owned in fee by the Tribe, consists of approximately 1,411.1 acres plus rights of way in Santa Barbara County, California and is located within the Tribal Consolidation Area (project site)."

At least nine Appeals of this Tribal Consolidation Area are now on record with the BIA, including an appeal by Santa Barbara County, objecting to the Pacific Region BIA approval of this area as a Tribal Consolidation and Acquisition Area for the Santa Ynez Band. The boundary of this TCA was approved with no legal or outside review and determination of its accuracy. It is based on an 1897 Roman Catholic Church lawsuit. However, in 2002 the attorney for the Santa Ynez Band stated there were no lineal descendants of the individual Indians involved in that lawsuit. (Appendix D or go to: http://www.polosyv.org/images2/pages/index/2002_letter.pdf)

This decision by the BIA was also completed with no notification to property owners within the TCA, nor notification to the County or the State. (See Appendix E). It has caused immediate impact on property values, with documented escrow failures (See Appendix E or go to: <http://www.polosyv.org/hotTopics/pdf/realtor-robert-etling-speaks.pdf>...) and the necessity of disclosure by realtors (See Appendix F)

The nine pending IBIA Appeals are challenging the TCA, which is being used as a basis of the EA for the Camp 4 fee to trust application.

Congresswomen Lois Capps and Diane Feinstein have sent questions about the TCA to the BIA. (See Appendix G.) Those questions should be fully answered as a part of the EA process.

In addition, the EA did not include any discussion of the impact of the TCA that facilitates fee-to-trust land transfers on all land within the TCA. If the TCA is approved, this 11,500 acres could be considered contiguous to a reservation. The standards are lower for contiguous or “on-reservation” fee-to-trust decision-making than the standards for “off reservation” fee to trust applications. Without the TCA, Camp 4 is clearly not contiguous and would be an “off reservation” acquisition subject to the stricter standards and other restrictions.

3. The EA and TCA fail to address the impact on hundreds of property owners that are within the TCA. (See Appendix H) Every one of the affected property owners are obviously “interested parties” with respect to the TCA and EA. As such they are entitled to receive direct notice of the TCA and EA from the BIA by personal delivery or mail. They have a due process right to receive direct notice and to have an opportunity to provide meaningful comment on the TCA before the EA is completed.

4. The EA fails to address the claimed 1,300 lineal descendants. The EA references 1,300 lineal descendants, page 1-6, “Purpose and Need”: “The Tribe has a population of 136 tribal members and approximately 1300 lineal descendants which it must provide for.” Although the application states the need to provide housing for 1,436 people, it only addresses 143 home sites. This EA fails to address this stated Purpose and Need.

5. The EA fails to address “commercial enterprises”, page 1-7, “Purpose and Need”: “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. Under the Proposed Action, the tribal government would be able to fully exercise its sovereignty over its own future growth.”

As explained above, according to the BIA, once land is in federal trust the use can be changed without limitation. The Santa Ynez Band is clearly stating their intent to expand development on this land to provide for these 1,436 people, and future

generations. This EA fails to address that stated Purpose and Need.

6. The EA fails to address the impact on water. Potential unrestricted development could impact the water supply to residents in the Santa Ynez Valley and Santa Barbara. In addition, tribes are making claims to water rights. A Hastings College Law Review Article, Summer, 2013 states: "...This note will lay out arguments the Santa Ynez Chumash Band of Indians could use to secure a right to groundwater..." (Appendix I or go to: http://www.polosyv.org/hotTopics/pdf/Research-LR-Santa-Ynez-Ground-Water-19%20HastingsWNWJEnLPoly_277.pdf)

7. The EA fails to address the TCA and fee-to-trust transfer of land outside the Santa Ynez Valley Community Plan (SYVCP). The SYVCP was adopted in 2009 after 10 years. It provides guidance for thoughtful decision-making. The TCA removes land from the SYVCP.

<http://longrange.sbcountyplanning.org/planareas/santaynez/documents/Board%20of%20Supervisors%20Adoption/Electronic%20Docket/Master%20Final%2010-15-09.pdf>

Santa Barbara attorney Barry Cappello informed Congresswoman Capps in 2011 about the removal of the 1,400 acres from the Santa Ynez Valley Community Plan outside of the established process.(See Appendix J or go to:

http://www.polosyv.org/hotTopics/pdf/11-18-11-CN_Lois_Capps.pdf)

The Santa Ynez Band is required to comply with applicable State and local law, including the Santa Ynez Valley Community Plan, regardless of whether the lands are taken into trust. See *Hawaii v. Office of Hawaiian Affairs*, 129 S.Ct. 1436 (2009).

8. The EA fails to address increased crime that occurs on land in trust- Indian Reservations. This is well documented: "The Country's 310 Indian reservations have violent crime rates that are more than two and a half times higher than the national average, according to data compiled by the Justice Department. American Indian women are 10 times more likely to be murdered than other Americans. They are raped or sexually assaulted at a rate four times the national average." (Appendix K or go to: <http://www.nytimes.com/2012/02/21/us/on-indian-reservations-higher-crime-and-fewer-prosecutions.html?pagewanted=1&r=0>)

9. The EA fails to address the impact of the Santa Ynez Band's claim of land as aboriginal territory on the State of California. In a 2005 letter from the Office of Governor Schwarzenegger, the Governor wrote: "Further, while the Tribe seeks to justify the acquisition as a re-acquisition of the "Chumash cultural group's" aboriginal territory, it has not demonstrated either a political entitlement to that territory...Allowing up to 108 federally recognized tribes in California to place into trust land for which they have an aboriginal claim could involve more than 75 million acres... Such a result would constitute federal interference with the powers reserved to the State in a manner patently at odds with the intent of the Tenth Amendment." (See Appendix L or go to: <http://www.polosyv.org/hotTopics/pdf/LetterFromGov.pdf>)

10. The EA fails to address the impact of the removal of 1,400 acres for the fee-to-trust, and 11,500 acres for the TCA, from the Williamson Act.

11. The EA fails to address the impact of the removal of 1,400 acres for the fee-to-trust, and 11,500 acres for the TCA, on agriculture.

12. The EA fails to address the impact of development on the Scenic Highway.

13. The EA was completed by AES. There are allegations that AES has violated NEPA with its work with other tribes: "Martin found that the Cowlitz tribe, its attorneys, partners and lobbyists had "at least 71 formal telephonic or in-person meetings" with AES while the lead agency, the Bureau of Indian Affairs (BIA), had virtually no active role in the preparation of the environmental study. This is illegal under NEPA." Because of these allegations, a different, more independent consultant should be hired to prepare the EIS to avoid future issues. (See Appendix M or go to: <http://archive.constantcontact.com/fs096/1102324248697/archive/1109368311474.html>)

Conclusion: This Environmental Assessment is inaccurate, incomplete, and the TCA is being legally challenged in at least nine separate appeals, including an Appeal by the County of Santa Barbara.

P.O.L.O. requests an Environmental Impact Statement and referral to an outside agency for its review.

These comments do not include every impact, and they are not intended to limit comments on any future documents regarding "Camp 4", including future Environmental Impact Studies.

Sincerely,

The Board of Preservation of Los Olivos, P.O.L.O.

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