



September 30, 2013

*Santa Ynez
Valley Alliance*

Interior Board of Indian Appeals
Office of Hearings and Appeals
United States Department of the Interior
801 N. Quincy Street, Suite 300
Arlington, VA 22203

Re: June 17, 2013 decision by the Pacific Regional Director to approve tribal consolidation area of the Santa Ynez Band of Chumash Indians

The purpose of this letter is to advise the Office of Hearings and Appeals regarding the effect of the Bureau of Indian Affairs' ("BIA") approval of the Santa Ynez Band of Chumash Indians' ("Band") proposed "Land Consolidation and Acquisition Plan" ("Plan") on the Band's recent Fee-to-Trust Application.

The issue is whether, as the Band alleges in its proposed Plan and as the BIA states in its Environmental Assessment for the Camp 4 Fee-to-Trust application, the approval of the Plan has the effect of treating the Fee-to-Trust application as on "on-reservation" application. The simple answer is "no."

Background

In its June 2013 proposed plan, the Band states, "Tribal consolidation areas, like on-reservation or adjacent lands, do not require the high level of scrutiny that off-reservation acquisitions do..." (Plan at p. 2.) The BIA's Regional Director for the Pacific Region approved this Plan on June 17, 2013. Although the Band's subsequent Fee-to-Trust application does not specifically repeat this claim, it does repeatedly refer to (and attach) the approved Plan, and it references the requirements of 25 CFR 151.10, which pertains to on-reservation applications.

The Environmental Assessment references the Plan and states that “According to the land acquisition policy defined in 25 CFR 151.3(a)(1), land may be acquired in trust status for a tribe when the property is located within a Tribal Consolidation Area and given the same level of scrutiny as land acquisition on or adjacent to a tribe’s reservation.” (EA at p. 1-5.) The Environmental Assessment goes on to state, “Therefore, the trust application for the proposed trust parcels constitutes a request for land acquisition within an approved Tribal Consolidation Area under the authority granted to the federal government under 25 CFR 151.3(a)(1).” (Id.)

Legal Authority and Analysis

Fee-to-trust applications are addressed in 25 CFR Part 151 (“Land Acquisitions”). These regulations have been modified over the years, but the most significant changes that are relevant to Camp 4 took place from 1995-2001. In 1995, a Final Rule was adopted by the BIA to address Nongaming Land Acquisitions. (60 Federal Register 32874 (June 23, 1995).) This rule “create[d] a new section which contains additional criteria and requirements used by the Secretary in evaluating requests for the acquisition of lands by the United States in trust for federally recognized Indian tribes when lands are outside and noncontiguous to the tribes’ existing reservation boundaries.” (Id., p. 32874.) This rule, section 151.11, addressed “Off-reservation Acquisitions,” and noted “[d]esignated (off-reservation) tribal consolidation areas will be treated as other off- reservation lands.” (Id. at p. 32875, emphasis added.) In response to comments, the BIA stated, “With respect to the comment which suggested that the new rule be made inapplicable to acquisition of off-reservation lands which have been designated in approved land consolidation plans, it should again be noted such lands will be treated as other off-reservation land (and thus subject to 25 CFR 151.11) pending the promulgation of further rulemaking.” (Id. at p. 32878, emphasis added.)

The 1995 rule adopted Section 151.11, which sets forth the criteria that apply to off-reservation acquisitions. Subsection (b) includes the requirement that “The location of the land relative to state boundaries, and its distance from the boundaries of 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. The Secretary shall give greater weight to the concerns raised pursuant to paragraph (d) of this section.” (Id. at p 32879.) Paragraph (d) requires notification to state and local governments, and solicitation of comments regarding potential impacts on the regulatory jurisdiction, real property taxes and special assessments. (Id.)

In January 2001, the BIA promulgated a new rule (“Acquisition of Title to Land in Trust,” 66 Federal Register 3452 (January 16, 2001)) that, among other things, added Subpart E to address Tribal Land Acquisition Areas (“TLAA”). This rule amended the regulations to seemingly lump fee-to-trust applications for lands inside an approved TLAA with lands inside a reservation. (Id., pp. 3461-3462.) Off-reservation applications addressed acquisitions outside a reservation or TLAA. (Id., pp. 3462-3463.) Interestingly, this rule required notice of a request for approval of a TLAA to the Governor’s Office and to appropriate local government officials. (Id., p. 3464.) This rule, however, was withdrawn in November 2001. (66 Federal Register 56608 (November 9, 2001.)

The current regulations are found in 25 CFR Part 151. Although the regulations include a definition of “Tribal consolidation area” (25 CFR 151.2(h)), there are no longer any regulations that set forth the process for achieving, or the effect of having approval of, such a designation. Section 151.3(a)(1) states that land may be acquired for a tribe in trust status “[w]hen the property is located within the exterior boundaries of the tribe’s reservation or adjacent thereto, or within a tribal consolidation area.” Land may also be acquired when a tribe already owns an interest in the land, or when the Secretary determines that such acquisition is necessary to facilitate tribal self-determination, economic development, or Indian housing. (25 CFR 151.3(a)(2), (3). Section 151.3(a)(1) does not discuss the process by which land may be acquired, and – contrary to the statement in the Environmental Assessment – does not provide that property located within a tribal consolidation area is given the same level of scrutiny as land acquisition on or adjacent to a tribe’s reservation.

Santa Ynez Valley Alliance

re: Effect of Land Acquisition and Consolidation Plan on Camp 4 Fee-to-Trust Application

Page 4

The requirements, process and criteria for considering applications for trust acquisitions are set forth in 25 CFR 151.9-15. The section that addresses on-reservation acquisitions is 25 CFR 151.10. This section applies to situations "when the land is located within or contiguous to an Indian reservation." Section 151.11, on the other hand, deals with off-reservation acquisitions and applies to land that "is located outside of and noncontiguous to the tribe's reservation." This section requires greater scrutiny as the distance between the land the tribe's existing reservation increases, and gives greater weight to concerns raised by state and local governments. (25 CFR 151.11(b).) Nothing in either of these sections references tribal consolidation areas. Accordingly, land acquisition requests are handled as either on-reservation or off-reservation, depending upon whether the land is located within, contiguous or outside the tribe's existing reservation.

In sum, the BIA's approval of the Band's Plan does not convert the Camp 4 acquisition request from an off-reservation acquisition request to an on-reservation acquisition request. The land is not located within or contiguous to the Band's existing reservation. The application must therefore be considered pursuant to 25 CFR 151.11. The statements in the Band's Plan and the BIA's Environmental Assessment do not comport with existing regulations.

Thank you for your consideration of our comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Oliver", with a long horizontal flourish extending to the right.

Mark Oliver, President

Service List

Honorable Barbara Boxer
112 Hart Senate Office Building
Washington, DC 20510

District Director
Honorable Dianne Feinstein
750 "B" Street, Suite 1030
San Diego, CA 92101

Honorable Lois Capps
U.S. House of Representatives
30-J.-East Carrillo Street, Suite A
Santa Barbara, CA 93101

Legal Affairs Secretary
Office of the Governor of California
State Capitol Buliding
Sacramento, CA 95814

Office of the Solicitor
Pacific Southwest Region
2800 Cottage Way, Rm E-2753
Sacramento, CA 95825-1890

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

Joginder Dhillon
Senior Advisor for Tribal Negotiations
Office of the Governor
State Capitol, Suite 1173
Sacramento, CA 95814

Ms. Sara J. Drake
Deputy Attorney General
State of California Department of Justice
PO Box 944255
Sacramento, CA 94244-2550

Peter Kaufman, Esq.
Deputy Attorney General
Office of the Attorney General
PO Box 85266-5299
San Diego, CA 92186-5266

Superintendent
Southern California Agency, BIA
1451 Research Park Drive, Suite 100
Riverside, CA 92507

Salud Carbajal
County Board of Supervisors
Santa Barbara County
105 East Anapamu Street, 4th Floor
Santa Barbara, CA 93101

Janet Wolf
County Board of Supervisors
Santa Barbara County
105 East Anapamu Street, 4th Floor
Santa Barbara, CA 93101

Doreen Farr
County Board of Supervisors
Santa Barbara County
105 East Anapamu Street, 4th Floor
Santa Barbara, CA 93101

Peter Adam
County Board of Supervisors
Santa Barbara County
511 E. Lakeside Parkway, Suite 141
Santa Maria, CA 93455-1341

Steve Lavagnino
County Board of Supervisors
Santa Barbara County
511 E. Lakeside Parkway, Suite 141
Santa Maria, CA 93455-1341

Chandra Waller
County Executive Officer
County of Santa Barbara
105 East Anapamu Street
Santa Barbara, CA 93101

Santa Barbara City Hall
735 Anacapa Street
Santa Barbara, CA 93101

Mr. Brad Vidro
City Manager
City of Solvang
1644 Oak Street
Solvang, CA 93463