

05/23/2005 10:29 FAX

002/002



## United States Department of the Interior

### OFFICE OF THE SOLICITOR

Pacific Southwest Region

2800 Cottage Way

Room E-1712

Sacramento, California 95825-1890

IN REPLY  
REFER TO:

May 23, 2005

916-978-5671

Ms. Brenda Tomaras  
Miranda, Tomaras & Ogas, LLP  
10755-F Scripps Poway Parkway, #281  
San Diego, CA 92131

Re: Application of 25 U.S.C. §81

Dear Ms. Tomaras:

You have inquired of this Office as to whether a possible land-use agreement between the County of Santa Barbara, California and the Santa Inez Indian Reservation where both parties agree to prohibit gaming development on a pending fee-to-trust land acquisition presents a question pursuant to 25 U.S.C. §81. It is my opinion that this question does present a Section 81 issue requiring Secretarial approval.

Section 81 requires Secretarial approval where an "agreement or contract with an Indian tribe encumbers Indian lands for a period of 7 or more years. . . ." In the case of *Santa Rosa Band v. Kings County*, 532 F.2d 655 (9<sup>th</sup> Cir. 1975), cert. denied, 429 U.S. 1038 (1977), the Court determined that the "word 'encumbrance' is to be broadly construed and is not limited to a burden which hinders alienation of the fee (cases omitted), rather focusing on the effect the challenged . . . action would have on the value, use and enjoyment of the land." *Id.* at 667. The proposed land-use agreement between the Tribe and Santa Barbara County, which is a permanent restriction, meets the definition of encumbrance as stated in the above Ninth Circuit decision. It is for this reason that I concluded that the Agreement would fall within the scope of Section 81 and require approval by the Secretary of the Interior.

If I can be of further assistance to you or the County of Santa Barbara, please let me know.

Sincerely

*Daniel G. Shillito*

Daniel G. Shillito  
Regional Solicitor