

WRITTEN STATEMENT FOR THE RECORD

by

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

a grass roots citizen group

**On behalf of citizens of the Santa Ynez Valley, and Santa Barbara
County, Ca.,**

**Submitted to the UNITED STATES HOUSE OF REPRESENTATIVES HOUSE
NATURAL RESOURCES COMMITTEE SUBCOMMITTEE ON INDIAN AND ALASKA
NATIVE AFFAIRS**

Chairman, Congressman Don Young

**IN THE MATTER OF H.R. 1291 (COLE), TO AMEND THE ACT OF JUNE 18, 1934,
TO REAFFIRM THE AUTHORITY OF THE SECRETARY OF THE INTERIOR TO TAKE
LAND INTO TRUST FOR INDIAN TRIBES, AND FOR OTHER PURPOSES; AND H.R.
1234 (KILDEE), TO AMEND THE ACT OF JUNE 18, 1934, TO REAFFIRM THE
AUTHORITY OF THE SECRETARY OF THE INTERIOR TO TAKE LAND INTO TRUST FOR
INDIAN TRIBES.**

July 22, 2011

PRESERVATION OF LOS OLIVOS, P.O.L.O., A GRASS ROOTS
CITIZEN GROUP

Dear Congressman Young,

Preservation of Los Olivos is a grass roots citizen group that was founded in 2002 when citizens in the Santa Ynez Valley (Ca.) believed that they were not being represented by their elected officials. Our non-profit organization has been involved in many issues, but the biggest and most alarming is in regards to expansion of tribal land and authority.

The testimony presented to you by the speakers at the Subcommittee Hearing on 7/12/11 was informative. We understand that there are many sides to a story. It is vitally important that you have a very clear picture of what is happening to communities, many of them rural and bucolic, because of the Secretary of the Interior's re-interpretation of the Indian Reorganization Act (IRA), decisions *Morton v. Mancari*, *California v. Cabazon*, and the Indian Gaming Regulatory Act (IGRA). These acts and decisions have created racially based entities on American soil functioning outside the United States Constitution under their own Tribal Constitutions, claiming sovereign immunity and now asserting full sovereignty. Although Congress is attempting to act to address resulting negative impacts, the Bureau of Indian Affairs is refusing to cooperate and provide the information necessary (list of tribes recognized in 1934) for Congress to make informed decisions. In the meantime, tribal governments race for expansion. Our local tribal government has recently demanded that Santa Barbara County enter a "cooperative agreement" consenting to their entitlement to re-acquire their "aboriginal territory" through expansion of land (1,400 acres) while ceding all State legislative authority. In New York, one tribe is claiming 250,000 acres, and another 64,000 acres.

Our "Chumash Casino Tribe" and hundreds of other casino tribes are negatively impacting communities and states all over this country. Legislators, far removed in Washington D.C., have no idea what is happening.

It is our intent to paint for you a detailed picture that is very representative of many, many communities all over this great Country.

In 2000 our neighbors, the Santa Ynez Band of Mission Indians, successfully remodeled their small, tented bingo hall into the 200,000 square foot Chumash Casino and Resort, in the heart of the township of Santa Ynez and the Santa Ynez Valley, Ca.

The Santa Ynez Valley is an agricultural region dotted with vineyards and horse ranches, north of Santa Barbara, and home to approximately 20,000 people. There are two access roads. One is a winding two-lane country highway of approximately 30 miles (Highway 154) that bypasses Interstate 101 in Santa Barbara and then reconnects to Interstate 101 in the Santa Ynez Valley by the small town of Los Olivos. The second route crosses Interstate 101 and goes through two small towns, Buellton and the Danish community of Solvang (Highway 246).

The Chumash Casino and Resort is adjacent to Highway 246 in the town of Santa Ynez. There are 4 schools that are within approximately 1 mile or less. The Santa Ynez Valley High School is walking distance from the casino.

Many Santa Ynez Valley community members voted yes on California Proposition 1A to allow their impoverished friends living on the “reservation” the legal ability to benefit from gambling revenue. Soon after the passage of Prop. 1A, the community, and County government, were alarmed when the Casino plans were announced – they had no idea it would be over 200,000 square feet.

There was nothing they could do.

Following the casino’s completion they watched the local crime increase by six times in the area around the casino. They heard the high school kids saying the best place to party and get drugs was on the “rez.” They heard stories of gambling losses and bankruptcy and divorce and addiction. They heard that 8,000 to 13,000 people gambled at the casino, daily, that the casino revenue was over 250 million dollars a year, and that each tribal member (154 members) received about \$40,000-\$60,000 a month. They watched crime skyrocket to hundreds of arrests each year – not including calls for service.

They learned that the revenues of businesses, including casinos, on land in “trust” are not subject to taxation. They realized that they were subsidizing the cost of the extra law enforcement, fire, medical personnel, and other services provided by the county.

Regardless of these negative impacts, we believe that the community would have accepted the Chumash Casino and Resort had it stopped there.

But it didn’t.

In 2004, four years after the completion of the Chumash Casino and Resort, the Chumash casino tribe began their aggressive expansion plans. They applied to take 6.9 acres, across from the Chumash Casino, into trust. The Bureau of Indian Affairs approved the application.

Congressman Young, our community members are passionate about the Santa Ynez Valley. They are actively involved and were in the process of working with local government to develop an updated Community Plan. Because of their involvement with the development of the Community Plan, they did research on the “fee to trust” process and were shocked to find out what was happening in other Indian casino communities.

They learned about a blueprint for expansion that casino tribes were using to buy up surrounding property and put it into federal trust, creating casino controlled towns. Because land in trust is outside local and state jurisdiction and taxation and so tribes can build whatever they want, they realized that their Community Plan, congruent with the peoples’ desire to maintain an agricultural community and carefully crafted for thoughtful development in regards to water, agriculture, open space, air quality, public safety and highway safety, would be meaningless if the casino tribe was able to expand its land base. They also learned that tribal governments assertion of “Indian Country” was clouding property titles of private property owners in other areas of the United

States. They saw that the tribal governments could negatively impact them - their safety, quality of lives, property values, and local businesses - but those governments had no accountability to them and barely had accountability to the county or state.

Our community reacted by going to their county government, the Board of Supervisors. For most of us, this was a shocking awakening to the realities of politics and casino tribes. We spent hours testifying in front of the Board, only to realize the decision was made before we had walked in the door. Although by the standards set by the Bureau of Indian Affairs, the Chumash casino tribe did not have the required need for more land in trust, the Board of Supervisors forfeited their right to appeal the 6.9 acre fee to trust application. Four community groups took the overwhelming step of filing private litigation against their government, the Department of the Interior.

Many community members threw themselves into research to understand Indian law and policy. We found that although the fee to trust process was supposed to consider harm to the community, the Bureau of Indian Affairs (BIA) routinely ignored the public testimony of objection- testimony that they asked for - in their decision making process. In the case of our community the BIA lost all community letters of protest but included letters of support from out of area politicians who received Chumash casino donations, along with support letters that were solicited by the Chumash casino from their employees and patrons.

The BIA said community members did not have standing to object to tribal expansion. In essence, only the "Indian" people had standing.

At that time, in 2005, communities all over this great Country were being railroaded.

The reality of the situation, Congressman Young, is that the Indian Gaming Regulatory Act created a reason for massive corruption. Our research found that the Department of the Interior, BIA was literally engineering tribal governments and then putting land in trust, allowing the new tribal government to build a casino. Jeff Benedict outlined this in detail in his book, "Without Reservation." *60 Minutes* did a story on it. There were "tribes" of sketchy historical background and "tribes" of 1 and 2 people demanding to be a tribal government. Our community uncovered a California Fee to Trust "Consortium" – casino tribes paying for BIA employees to speed up the fee to trust process (Capitol Weekly, April 1, 2010, "Changes made to California to Fee to Trust consortium").

We learned that casino tribes, using their hundreds of millions of dollars of gambling revenue to purchase land, were then demanding their entitlement to "take back their aboriginal territory." In California there are 137 fee to trust applications on file encompassing more than 15,000 acres of land. In New York 250,000 acres are involved. The Oneidas "demand[ed] recovery of land they had not occupied since the 1795-1846 conveyances." Sherrill, 544 U.S. at 210. "Tribal plaintiffs sought to eject the approximately 20,000 private landowners who now occupied the lands (United States v. State of New York, Nos. 10-1404, 10-1420)." The Cayuga Nation in New York had made a 64,000 acre land claim.

We thoroughly researched the Santa Ynez Band of Mission Indians. We found they were not descended from the aboriginal Chumash tribe but based on a group of people living on the land reserved for the deceased Chumash that were included on a 1940 census roll.

These people may, or may not have had any Indian blood. At best the tribal chairman may be 1/16th Indian. Since the tribal census rolls did not make any indication of “Chumash,” whether any of the Santa Ynez Band of “Chumash” Mission Indians are Santa Ynez Chumash is yet to be proven.

We uncovered litigation to learn that the land they were living on had been deeded for the benefit of the remaining Chumash, and for the benefit of their surviving descendents, and when those people were dead the land was supposed to revert back to the original owner. It was not a reservation. We found a document from the Chumash casino tribe attorney stating that all those people were dead long before 1940.

Our research showed that the clear intention here was not to encourage growing an existing “sovereign nation” but instead to take care of people who had probably been servants to the priests of the Santa Ynez Mission.

We took this information to our local and State governments. We were ignored.

We realized that the intention of many tribal governments fueled by gambling revenue is massive expansion. Here is a quote from testimony of our neighbor, Santa Ynez Band of Mission Indian Chumash Casino Tribal Chairman Vincent Armenta, before the House Committee on Natural Resources Oversight Hearing on the "Department of Interior's Recently Released Guidance on Taking Land into Trust for Indian Tribes and its Ramifications" February 27, 2008:

“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.”

“The Indian Reorganization Act of 1934, the so-called Wheeler-Howard act, was designed with two objectives. The first was to reverse the effects of the Dawes Act of 1887 and end the era of allotment and forced assimilation by creating strong tribal governments on established federal reservations. The second objective was to reverse the loss of tribal lands and, if possible, re-establish the aboriginal territories of many tribes.

“We would hope that the Secretary would work with us to re-establish the former aboriginal territories of our tribe.”

“We ask the House Resources Committee to work with Tribes and at least permit us to go through the indignity of having to buy back our aboriginal territories. Instead we are being labeled as desiring to Reservation Shop. The Chumash desire to regain the lands of their ancestors even if it means buying them a piece at a time. This aboriginal territory analysis is completely absent from the so-called commutable distance test--which is mere pretext to keep tribes on their existing diminished reservations.”

To note is that Chairman Armenta’s testimony disputes a letter written August 26, 2005 by Governor Schwarzenegger’s Office, Legal Affairs Secretary, to the Bureau of Indian Affairs regarding an application by the Santa Ynez Band to take 5.68 acres into trust:

Simply put, in pre-contact times there was no Santa Ynez Band of Mission Indians or any single independent political entity constituting a collection of the many different villages in the Santa Ynez Valley. The Santa Ynez Band's territory is the territory assigned to it by the federal government because of the United State's policy to provide land for homeless Indians whose survival depended upon the provision of such land (top, page 6).

Any benefit to The Tribe From this Proposed Trust Acquisition is Far Outweighed by the Adverse Individual and Cumulative Adverse Effects Approval of this Trust Application would have on the State (top, page 7).

<http://www.polosyv.org/hotTopics/govLetter.htm>

Chairman Young, we hope that the picture is becoming clear to your subcommittee. Taking land out of local and state jurisdiction and into federal "trust" is not an innocent proposition. It is dismantling the United States Constitution, undermining State sovereignty and trampling the sovereignty of the People. Remember, tribal governments have their own Tribal Constitutions. When land is in federal trust, neither the tribal members, nor the non-Indian patrons, have United States Constitutional protection.

The tribal government is a closed government and they are being allowed to do virtually whatever they want on their "reservations." This unwarranted deference to tribal sovereignty was specifically limited by Congress when it adopted the Indian Reorganization Act in 1934 in Section 19 by allowing only those tribes "now recognized" to have the benefit of the act. This was a deliberate decision by Congress because recognizing new Indian tribes harms the non-Indian people in the surrounding communities. These tribal governments have no accountability to the people they harm – including their own tribal members. Congress recognized this fact in 1934 and specifically prevented the Secretary of the Interior from having the authority to create new tribes in Section 19 that would have the benefits of the act. In *Carcieri v. Salazar* the United States Supreme Court reaffirmed Congress' authority to limit secretarial discretion to "reinterpret" the Indian Reorganization Act to allow the benefits of the act to apply to the more than 300 newly recognized tribes like the Santa Ynez Band.

These tribal governments can contribute to the political process – something no other foreign government can do - and thus "buy" legislation that benefits them.

They bully local governments. In an April 1, 2007 interview with the Santa Barbara News Press, Chumash Casino Chairman Vincent Armenta said:

"Legally I have to meet them (Board of Supervisors) once a year for the Special Distribution Fund. That is the only input the County has."

"...the Chumash issued a "cease and desist" order to the nearby Santa Ynez Airport, demanding that planes stop flying over the reservation. Tribal attorneys threatened to sue Santa Barbara County if the airport continued to violate the tribe's airspace. The tribe dropped the issue. "We could have shut down the airport," Armenta said. "But that was not our intent. The letter was to let them know they are not supposed to be doing it." (Los Angeles Times, "Casino success breeds tension," Dec. 25, 2004).

They are not accountable to the community they harm, and in fact scoff at community concern. Regarding their 2004 attempt to put large acreage into trust:

“But Armenta says negotiations are continuing, and he is confident the tribe will once again prevail over its adversaries. "At what point in time," he said, "are they going to get tired of losing?" (Los Angeles Times, “Casino success breeds tension,” Dec. 25, 2004).

Chairman Armenta also stated he aspires to follow the example of the casino tribes behind the Mohegan Sun and Foxwoods, two of the largest casinos in the world (Santa Barbara News Press, April 1, 2007, “Chumash plan financial future.”) In internal tribal minutes, Chumash tribal leadership said the “hospitality industry in the valley should be controlled by the tribe.” (Published in the Santa Ynez Valley Journal, <http://santaynezvalleyjournal.com/article.php?a=86>).

Because Congress was so shortsighted in its passage of the Indian Gaming Regulatory Act (IGRA), the unintended consequences have been huge. Most people have no idea that our country is losing its sovereignty to approximately 550 Indian tribal governments, many of which are run by dictatorial leaders. There are many more tribes attempting to become a federally recognized tribal government.

Furthermore, few citizens recognize that many of these tribal leaders have no more than marginal blood quantum and that most are drawn to the position by the obscene gambling revenues that are available to the elite or the powerful in a tribe. It is also important to note that the revenues from the casinos are not being shared among all members of the tribe; the majority is partitioned among the few extremely wealthy leaders, their non-Indian lawyers, accountants and facilitators.

As a result, some tribes receive up to 1 million state and county tax-free dollars per year, while other members of the tribe remain poor. The tribal members in power control their own tribal members by threat of dis-enrollment. Tribal governments can also decide that people with no Indian blood can be in their tribe. This increases the numbers of the tribe to argue for more federal taxpayer subsidies and/or land in trust for housing and economic diversification to support the numbers.

The huge casino profits are also commonly used to provide campaign funds to local, state or national politicians, the amounts of which exceed anything the average citizen could ever match. Money spent on print, radio and TV ads is used to control and prevent potential negative news that is often associated with poorly regulated casinos.

Here in the Santa Ynez Valley we had such problems getting the local newspapers and radio to report the realities of casino harm that a local rancher bought a newspaper (Santa Ynez Valley Journal) so that she could insure the truth would be reported to the community.

Adding insult to injury, there is no enforcement of the marginal protections that are in place to stop expansion of the gambling operation. The Tribal State Gaming Compact specifically limits all operations related to the casino to be on the “reservation.” The Gambling Control Commission refuses to enforce the California Tribal State Gaming Compact <http://www.polosyv.org/hotTopics/letterToCGCC.htm>. The State refuses to enforce the Compact.

http://www.polosyv.org/hotTopics/pdf/govLetter_compactViolation.pdf

Here is what our Chumash Casino tribe neighbors have been up to since 2000 and the completion of their very successful casino. Our community has spent thousands of hours and almost 2 million dollars to win legal “standing” to try to stop their expansion:

1. Application for 6.9 acres into trust. P.O.L.O. now in the lead of litigation filed, *Preservation of Los Olivos et. al v. Pacific Regional Director, Bureau of Indian Affairs*
http://www.polosyv.org/images2/pages/index/8_19_10dale_risling_letter.pdf
Currently with the BIA in Sacramento. BIA has not responded to our request asking about the status of this litigation. Carcieri is cited in this litigation as we have proof they were not a tribal government recognized in 1934. Our litigation also cites Hawaii v. Office of Hawaiian Affairs that states the Department of the Interior cannot remove State land into federal jurisdiction. The litigation also cites the numerous harms to our community, including the invalidation of our Community Plan if additional land is taken into federal “trust” and local business owners can be undercut by businesses on land in “trust.
2. An attempt to put an additional 5.8 acres into federal “trust” (Chumash casino tribe put application on hold). See letter by Office of the Governor objecting to this fee to trust application, citing “potentially severe adverse cumulative impacts on California” <http://www.polosyv.org/hotTopics/govLetter.htm>,
<http://santaynezvalleyjournal.com/article.php?a=86>
3. Purchase of the largest hotel in the neighboring town of Solvang, the Royal Scandinavian. Purchased because they do not have enough rooms at the Chumash Resort. Using it to support their gaming operation, a violation of their Tribal State Gaming Compact. County government refused to take action. Request for enforcement of Compact sections 2.8 and 4.2 by P.O.L.O. No action taken by Ca. Gambling Control Commission or Governor
<http://www.polosyv.org/hotTopics/letterToCGCC.htm>,
<http://santaynezvalleyjournal.com/article.php?a=86>
4. Purchase of a restaurant in Buellton, neighboring town. Use of this new facility for casino employment offices, a violation of the Tribal State Gaming Compact. County government refused to take action. Request for enforcement of Compact sections 2.8 and 4.2 by P.O.L.O. No action taken by Ca. Gambling Control Commission or Governor.
<http://www.polosyv.org/hotTopics/letterToCGCC.htm>,
<http://santaynezvalleyjournal.com/article.php?a=86>
5. Purchase of two gas stations across from the casino.
6. Use of off reservation property for parking for the casino. County government refused to take action. Request for enforcement of Compact sections 2.8 and 4.2 by P.O.L.O. No action taken by Ca. Gambling Control Commission or Governor.
<http://www.polosyv.org/hotTopics/letterToCGCC.htm>,
<http://santaynezvalleyjournal.com/article.php?a=86>
7. Attempt to get 2000 more slot machines. 13,000 Santa Barbara residents signed the NoMoreSlots petition.
8. The renaming of scenic Highway 154 to the Chumash Highway done without any notice to the local community or County government (known as the Chumash

Buyway by the locals).

9. Proposed Ca. legislation AB 2686 that would have named the Chumash casino tribe a “public agency” and would have given them authority over the public water supply throughout the Valley. Stopped by our SY Valley community. (http://www.polosyv.org/images2/pages/index/AB_2686_hijacked_Letter_to_Gov_9_08.pdf).
10. Proposed Ca. legislation SB 170 that would have dismantled the Williamson Act by allowing California tribal governments to purchase agricultural land in the Williamson Act and develop it. Stopped by our SY Valley community and others in testimony to State senate committee.
11. Expansion of sales of alcohol. Three Supervisors ignored Sheriff Brown’s testimony of significant crime requiring 6 deputies and 3 medics at the Casino and Resort, in addition to our Supervisor who noted her extreme concern over public health and safety. 3-2 vote in favor of expansion (7-5-11). See YouTube video at: <http://www.youtube.com/watch?v=8iruMLbjMXo>
12. Beginning of talks with County CEO to put 1400 acres into “trust” through a mitigation/“cooperative agreement.” The 1400 acre site is the size of the neighboring town of Solvang:
<http://www.santaynevalleyjournal.com/archive/9/28/8644/>

The 1400 acres is a huge issue for our community. Because the P.O.L.O. litigation has them stopped in the BIA process, they approached Congressman Elton Gallegly to write legislation. Congressman Gallegly’s office stated if the Santa Barbara County government supports the legislation he would consider writing it. Over the past 6 years Congressman Gallegly has been informed of our community’s objection to any expansion of the Chumash casino tribe, including a recent letter signed by five Santa Ynez Valley and Santa Barbara Community groups.

(<http://www.polosyv.org/images2/pages/index/galleglyletter.pdf>) We just learned that the Chumash Casino tribe met with the County CEO and presented a “cooperative mitigation agreement.” This agreement states they can build whatever they want on the 1400 acres in anticipation of it being placed into federal “trust.” If this land goes into trust they could literally build their own city, outside local and state jurisdiction and taxation. To see the cooperative agreement, published in the Santa Ynez Valley Journal: <http://www.santaynevalleyjournal.com/archive/9/28/8644/>

Congressman Young, we hope that we have painted a very clear and detailed picture of the effects that the Indian Gaming Regulatory Act and agenda by the Bureau of Indian Affairs to grow tribal governments, is having on communities. We ask you to visit our website that documents years of research and writing on expansion of tribal land and authority (www.polosyv.org).

We ask that each member of your committee ask yourselves: In 1934 did Congress intend to address the needs of existing Indian tribal governments, or did it intend to promote separatism and create ever growing and perpetually powerful independent tribal governments that will, if not stopped, revert this country back to tribalism?

A Carcieri fix will change the original intent of Congress in adopting the Indian Reorganization Act that specifically limited the authority of the Department of the

Interior and its Secretary to only those tribes “now recognized and under federal jurisdiction.” Unlimited Secretarial discretion is a direct affront to the structure of our Constitution that was made to require limited government authority to protect the rights of the People. Congress protected the Constitution in 1934 while trying to respect the remaining Indian tribes. *If Congress is willing to delegate unlimited authority to a Department that intentionally undermines the sovereignty of our People and States then our Republic is lost.*

Our community respectfully requests that you do thorough research into what is happening all over the Country regarding expansion of tribal land and authority. We would ask to be a part of any hearings in California to help educate you further on the impacts of expansion of tribal land and authority on communities.

We request that you honor the United States Supreme Court and do not support a “Caricieri fix.”

Thank you very much for your attention to this very important issue.

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

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