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Dear Supervisors,

Below is the letter sent to Senator Dean Florez from P.O.L.O., Preservation of Los Olivos, regarding SB 170.

Thank you,

Kathy Cleary

LATE DIST

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March 30, 2009

Honorable Dean Florez
California State Senate
State Capitol
Sacramento, California 95814

RE: SB 170, Dean Florez, 16th district, NO

Dear Senator Florez,

Review of your bill SB 170, sponsored by and for the benefit of the Santa Ynez Band of Mission Indians indicates that you are unaware of the recent Supreme Court Decision Carcieri v. Salazar and other important information regarding tribal special interests that are not accountable to the public, local and oftentimes state governments.

Over the past four years grass roots citizen groups P.O.L.O. and POSY have made repeated efforts to explain the negative impacts surrounding a multitude of tribal special interests that has threatened public water, health, safety, property values and now agriculture.

It is imperative that you and all senators and assembly members involved in legislation that includes "federally recognized Indian tribes" read this Supreme Court Decision and other information and decisions that will affect many California tribes.

Given the current economic meltdown and chaos in California and the country it is no longer acceptable that senators and assembly members do not take the time to be educated. To repeat, tribal special interests are not accountable to the public, county and oftentimes state governments. *Because of this any expansion of tribal authority or land by these entities that have no accountability to the public can never be in the public interest.*

Regarding SB 170, On February 24, 2009 the United States Supreme Court in the case of Carcieri v. Salazar limited the authority of the Secretary of the Interior to apply 25 U.S.C. § 465 to take fee lands into trust for an Indian tribe that was not "now under federal jurisdiction" in June 1934 when the Indian Reorganization Act (IRA) was enacted. Like the Narragansett Tribe in Rhode Island that was the subject of the Carcieri ruling, the Santa Ynez Band of Mission Indians was not a tribe "now under federal jurisdiction" in June 1934. In fact, the Bureau of Indian Affairs (BIA) ruled specifically in 1936 that the Santa Ynez Band was not eligible to vote on becoming an Indian Reorganization Act (IRA) tribe and was not eligible for its benefits. The IRA is the source of 25 U.S.C. § 465 and the fee to trust process. Any claim by the Santa Ynez Band that they are still eligible for lands to be placed into trust will be immediately contested in federal court. Local citizens groups have already successfully gained legal standing to sue the Secretary of the Interior over the fee to trust process (Preservation of Los Olivos, P.O.L.O, and Preservation of Santa Ynez, POSY, vs. the United States Department of the Interior).

There is no easy congressional fix for the Carcieri decision. Congress must decide whether to attempt to amend the Indian Reorganization Act of 1934 and change its basis from protecting tribes continuously under federal jurisdiction as tribal entities to all tribal entities with any claim of a federal relationship to restore a blanket fee to trust power as the Secretary assumed prior to the Carcieri decision. Such a change will subject the new legislation to constitutional challenge for violation of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States as a race based law. The IRA was adopted 20 years before the Civil Rights Movement and more recent developments in affirmative action law. Whether any amendment to the IRA could withstand the rigorous strict scrutiny challenge the federal courts will apply is in doubt.

Similarly, there is no easy way around the Carcieri decision for the federal Bureau of Indian Affairs or federal Department of Justice solicitors. The original author of the Indian Reorganization Act and Commissioner of the BIA in 1934, John Collier, was a very prolific writer about his new legislation. Many contemporaneous memoranda exist explaining how the eligibility of the tribes was determined for the IRA. These memoranda were used by the Supreme Court in the Carcieri decision itself and will make it very difficult for the BIA or DOJ to expand the IRA without an actual amendment of the IRA by Congress.

In addition, in testimony to the House Committee on Natural Resources, February 27, 2008, Santa Ynez Band Chairman Vincent Armenta stated, "We would hope that the Secretary (of the Interior) would work with us to re-establish the former aboriginal

territories of our tribe." Earlier in his testimony he stated this was over 7000 square miles.

California senators and assembly members must be aware that this claim to aboriginal territory is erroneous. In a letter regarding an application by the Santa Ynez Band to place 5.8 acres into trust, Governor Schwarzenegger explains that this claim is erroneous. There was no single Chumash tribe. There were hundreds that shared a common dialect "Chumash". The land housing their casino, tribal housing and parking structure was in fact land under state jurisdiction and deeded to five families for their, and their descendents' use, and was to revert back to the original land owner upon the death of all descendents. These descendents are dead as learned by a letter from a Santa Ynez Band tribal attorney dated approximately 2002.

Additional clarification comes from a letter from Acting Assistant Secretary of Indian Affairs Wyman D. Babby dated January 14, 1994 identifying most if not all California tribes as communities of adult Indians verses historic Indian tribes.

In conclusion, the Santa Ynez Band is asking the California Legislature to alter the Williamson Act to confer a special benefit that it is no longer eligible to receive under federal law. The Williamson Act has been very successful in California in protecting agricultural lands from development. It would be foolhardy and would create significant chaos to carve out a major loophole in such a successful act for an Indian tribe of question and that is no longer eligible to expand its land base through the fee to trust process as requested in SB 170. Passage of SB 170 could completely dismantle the Williamson Act and would make General and Community Plans moot.

Senators and Assembly Members are elected to represent the public interest. Expansion of land and authority of questionable tribal special interests that have no accountability to the public can never be in the public interest.

Sincerely,

Kathy Cleary
P.O.L.O., Preservation of Los Olivos
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cc:
Senator Tony Strickland
Assembly Member Pedro Nava
Senator Wiggins
Senator Dave Cox
Senator Samuel Asmestad
Senator Kehoe
Senator Wolk
Senate Local Government Committee