

SANTA BARBARA COUNTY BOARD AGENDA LETTER



Clerk of the Board of Supervisors
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Agenda Number:

Prepared on: July 10, 2002
Department Name: County Administrator
Department No.: 012
Agenda Date: July 16, 2002
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If Yes, date from:
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TO: Board of Supervisors

FROM: Michael F. Brown,
County Administrator

STAFF CONTACTS: Scott Ullery, Deputy County Administrator (568-3400)
Dave Ward, Planning & Development (568-2072)
Mary Ann Parks Slutzky, County Counsel (568-2950)

SUBJECT: Comment Letter to the Bureau of Indian Affairs on the Santa Ynez Band of Mission Indians Fee to Trust (Land Acquisition) Application

Recommendation(s):

That the Board of Supervisors:

1. Review, execute and authorize the Chair to sign a comment letter from the Board of Supervisors to the Department of the Interior, Bureau of Indian Affairs, on the Santa Ynez Band of Mission Indians (Tribe) fee-to-trust application.

Alignment with Board Strategic Plan:

The recommendation is primarily aligned with Goal No. 2. A Safe and Healthy Community in Which to Live, Work, and Visit; and Goal No. 5. A High Quality of Life for All Residents.

Executive Summary and Discussion:

The County Administrator's Office received a Notice of (Non-Gaming) Land Acquisition, dated May 29, 2002, on June 5, 2002 from the Bureau of Indian Affairs. This is a fee-to-trust application to have approximately 1.17 acres of land located along Highway 246, outside the eastern boundary of the Reservation placed "into trust" for the Tribe by the Bureau of Indian Affairs. The subject property consists of 5 parcels, commonly known as the "Condit" and "Daniels" properties (Assessor's Parcel Nos. 143-253-02, 143-253-07, 143-253-08, 143-254-01-00-3 and 143-254-03-00-9, see attached map). County comment to the Bureau of Indian Affairs on the Tribe's fee-to-trust application is limited to the following four areas pursuant to the Code of Federal Regulations, *Title 25, Indians, Part 151.10, 151.11*: 1) if known, the annual amount of property taxes currently levied on the subject properties allocated to the County; 2) any special assessments and amounts thereof, that are currently assessed against the property in support of the County; 3) any government services that are currently provided to the property

by the County; and 4) if subject to zoning, how the intended use is consistent, or inconsistent, with current zoning.

At the request of the County Administrator, appropriate County departments reviewed the application and gathered information for inclusion in the attached comment letter. The main comments to the BIA include the following:

- ❑ The application does not describe the intended use of the property and therefore County review is limited.
- ❑ The application provided to the County is incomplete. Parcel information and Assessor Parcel Map provided in the application is inadequate to determine the exact area and highway right-of-way under consideration for annexation to the Reservation.
- ❑ The Tribe's application references several attachments (1-13), however some of these documents are missing from the application (Attachments 1-3 and 10-13).
- ❑ The Tribe's application references incorrect sections of 25 CFR Sec. 151 et. seq.
- ❑ The application does not address the cumulative impacts of the proposed action in the context of other Reservation development plans, a requirement pursuant to the National Environmental Protection Act (NEPA).

Mandates and Service Levels:

The proposed Casino Consolidation Project, recently reviewed and commented on by your Board, is expected to result in off-reservation impacts on the surrounding Santa Ynez Valley communities and traffic along Highway 246. The County documented those impacts, including service level impacts, in a mitigation analysis document provided to the Tribe on May 30, 2002. Since the fee-to-trust application does not identify proposed development for these parcels, impacts to County service levels are unknown.

Fiscal and Facilities Impacts:

Removing these lands from County jurisdiction will result in a loss of property tax revenue and potential sales tax revenue that might be generated from future commercial development on these parcels. The impacts of this FTT application should be analyzed within the broader context of the Casino Consolidation Project, as well as other prior and/or current FTT applications in order to assess the cumulative impacts to County service levels and the surrounding community.

Concurrence: County Counsel and Planning and Development

cc: Vincent Armenta, Chumash Tribal Chairman
John Patton, Planning and Development Director
Michael Emmons, County Surveyor

July 16, 2002

Virgil Townsend, Superintendent
Department of the Interior
Bureau of Indian Affairs
Southern California Agency
2038 Iowa Avenue, Suite 101
Riverside, CA 92507-2471

**RE: 2002 Fee-to-Trust Application (5 Parcels) – Santa Ynez Band
of the Chumash Mission Indians**

Dear Mr. Townsend:

Thank you for the opportunity to provide comments on the proposed acceptance of title to real property in trust by the United State of America for the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation of California (Tribe) in Santa Barbara County, California. This letter provides information on each of the four topics requested in the Notice of (Non-Gaming) Land Acquisition Application for the subject application. The County's ability to provide a complete response to the request is limited, however, by the following deficiencies of the application:

1. The intended use of the properties is not described. Without knowing the intended use, it is difficult to provide information concerning "how the intended use is consistent or inconsistent with current zoning." Without that information, the Secretary will not be able to adequately assess the impact of the removal of the subject properties on the County's tax rolls and the County services provided to the property as well as how the intended use is consistent or inconsistent with current zoning. The County recommends that the Secretary request additional information from the Tribe regarding the use and potential development of the properties.
2. The application is incomplete in at least three important ways. First, the parcel information and Assessor Parcel Map provided in the application is

inadequate to determine the exact area of the parcel adjacent to Highway 246 (APN 143-254-001) and whether a portion of the highway, including its right of way is under consideration for annexation to the Reservation (See Attachment 1). The meets and bounds description needs to be clarified to determine accurate ownership of land on which Highway 246 and its right of way are located in that area. Whether Caltrans owns the land or whether it is an easement is pertinent to the County's impact analysis and general understanding of the implications the FTT application has for County services and traffic issues in the region. If widening Highway 246 became necessary and a portion of the highway or its right of way had been incorporated into the Reservation, it is unclear whether the status of the land would hinder road widening or other future improvements.

Second, The Tribe's application references several attachments (1-13), however some of these documents are missing from the application (Attachments 1-3 and 10-13). Our County Counsel has requested these attachments from the BIA; however they have not been provided to date. Without the attachments, neither the County nor the Secretary can fully understand the scope of what is being requested in the FTT application, and therefore cannot determine the full extent of off-reservation impacts that may ensue.

Third, the application references sections of the Code of Federal Regulations (CFR) which govern contiguous reservation acquisition, specifically 25 CFR Sec. 151.10. The applicable Section is 25 CFR Sec. 151.11. Pursuant to 25 CFR, Sec. 151.11 (Off reservation acquisitions) "Where land is being acquired for business purposes, the tribe shall provide a plan which specifies the anticipated economic benefits associated with the proposed use." In providing additional information to the Secretary and the County regarding the proposed use and potential development of the parcels, the Tribe should also comply with the stipulation for provision of a business plan, as appropriate.

3. The application does not address the cumulative significant impacts of the proposed action in the context of other Reservation development plans. Instead, the manner in which the FTT applications have been submitted and processed results in piecemeal analysis without the benefit of understanding the Tribe's goals and long-range plans regarding overall land acquisition efforts. This is contrary to the principles of the National Environmental Policy Act (NEPA) and the California Environmental Quality Act, which require cumulative impact analyses. Therefore, the categorical exemption requested by the Tribe in the application is not appropriate.

Under NEPA review, the impacts of this FTT application should be analyzed within the broader context of the Casino Consolidation Project, as well as other prior and/or current FTT applications such as the request for 6.9

acres north of the Reservation (County comment letter dated June 13, 2001) and the potential Davidage property (See Attachment 2, Map location # 18), referenced in this FTT application (Page 4). The Secretary and the County therefore require additional information from the Tribe regarding the cumulative status of the aforementioned applications, including proposed uses and potential development.

The County of Santa Barbara respectfully requests that these deficiencies in the application be corrected, and the application be resubmitted. Pending your full consideration of this request, the following is a point-by-point response to the four categories of information requested.

1. The annual amount of property taxes currently levied on the subject property allocated to your organization.

According to the County's Auditor-Controller's Office, in fiscal year 2001-2002, the total property taxes levied was \$12,603. In fiscal year 2002-2003, the property taxes on these parcels will total \$13,030. Approximately 20% of these funds go to the County's general fund and approximately 7% of these funds go to County Special Districts for specific purposes such as fire protection or flood control (See Attachment 3). The remaining funds are paid to non-county entities such as schools, cities, and independent special districts. The ultimate financial impact on County government cannot be determined because the potential use(s) of the sites are unknown.

2. Special assessments and amounts thereof, that are currently assessed against the property in support of your organization.

Special assessments are currently assessed at \$210.74 for the subject parcels (See Attachment 3).

3. Any government services that are currently provided to the property by your organization

Development on newly acquired trust land, together with the expansion and renovation of gaming and other entertainment related facilities on existing trust land, will significantly increase demand for County services. At the same time, the County's ability to exact taxes and fees from the source of the impact or to regulate activities causing the impact will be removed.

Current services to the subject parcels include fire protection and roadway access from Edison Street, a County maintained road. Potential uses on the FTT parcels will add incrementally to traffic levels since traffic volumes are expected to increase due to the Casino Consolidation Project, reducing the Level of Service (LOS) on Highway 246 (County comment letter on the Casino Consolidation Project, May 7, 2002). The net

effect of activities on Reservation lands is likely to result in increased congestion along portions of Highway 246; consequently, some travelers will seek alternative routes on rural roads which may not be designed for increased volumes as shortcuts to avoid the congestion.

4. How the intended use is consistent or inconsistent with current zoning.

The current zoning for the Daniels Property (1.1 acres) is Highway Commercial (CH). The purpose of the CH zoning designation is “to provide areas adjacent and accessible to highways or freeways exclusively for uses which serve the highway traveler.” The current zoning for the Condit Properties (0.8 acres) is Retail Commercial (C-2). The purpose of the C-2 zoning designation is “to provide areas for local retail businesses and commercial needs including stores, shops, and offices supplying commodities or performing services for the residents of the surrounding community.”

Although the application states that “The Tribe intended purpose of land consolidation is consistent with current surrounding zoning” (Page 8 of the Application), which suggests consistency with commercial uses, no proposed use or potential development is described. However, the application also states that “No specific economic development plans exist for use of these parcels” (Page 10 of the Application). Conversely, in support of self-determination, the application concludes that “The Tribe’s goal of expanding its *buildable and developable* lands will have inconsequential jurisdictional impacts on the community, but maximum beneficial self-governance impacts for the Tribe” (Page 11 of the Application, emphasis added). The County is unable to assess potential jurisdictional problems and conflicts which may arise due to the development without knowing the intended land use.

Moreover, the Tribe’s application indicates that “*the property will serve to enhance the Tribe’s land base as is contemplated by its land consolidation plan which supports tribal self-determination. Doing so will allow the Tribe jurisdiction over such things as the overt appearances of the property as well as any cultural resources contained within the property. Tribal lands also comprise the heart of the non-economic resources of a tribe by serving cultural, spiritual, or educational purposes, among others*” (Page 6). Again, the application does not specify the proposed uses for the land, including any potential development plans. It should also be noted that existing County and State regulations currently offer protection of cultural and visual resources, which appear important to the Tribe’s rationale for filing the FTT application. Consistency with existing zoning and compatibility with surrounding uses cannot be established without additional information provided by the Tribe.

Conclusion / Recommendations

Under 25 CFR Sec. 151.12(a) “The Secretary may request any additional information or justification he considers necessary to enable him to reach a decision.” In its current form the application is incomplete and provides the Secretary of the Interior with

insufficient information on which to base his decision to approve or deny the Tribe's FTT request. Without an adequate basis for assessing the impact of the removal of the subject properties from the tax rolls, the County recommends that the Secretary require the Tribe to resubmit a revised application addressing the concerns herein and summarized below.

To ensure adequate review of the FTT application and NEPA materials, the County recommends that the BIA:

- 1) Request additional information from the Tribe concerning its intended use of the property including anticipated size, height, location, and occupancy of structures as well as the anticipated number of people traveling to and from the facilities. Request additional information from the Tribe on the need for the land to be under federal trusteeship as well as copies of its regulations, if any, that will govern activity on the land if taken into trust and out of County regulatory jurisdiction.
- 2) Request additional information and clarification from the Tribe regarding parcel information to determine the exact area of the parcel adjacent to Highway 246. Request that the Tribe provide Attachments 1-3 and 10-13 for the County's review. Request that the Tribe provide a business plan pursuant to 25 CFR Sec. 151.11(c), as appropriate.
- 3) Request additional information from the Tribe regarding cumulative impacts of the FTT application in the context of other Reservation development plans consistent with NEPA requirements. A public hearing is also required under NEPA (Sec. 1506.6(c)) where there is substantial public interest in the proposed action. County officials and Santa Ynez Valley residents have expressed significant concern over the FTT acquisition of land that may allow the Tribe to expand its casino operations or otherwise result in significant economic, visual, and environmental impacts. In order to provide adequate opportunities for public comment, the BIA should conduct all public hearings related to NEPA review of the Secretary's action regarding the Tribe's FTT application locally in the Santa Ynez Valley.

Thank you for the opportunity to furnish comments on the proposed Fee-to-Trust application. Please contact Mary Ann Slutzky (805-568-2950) in the office of County Counsel for any questions regarding the information on the Tribe's Fee-to-Trust application.

Respectfully,

Gail Marshall, Chair
Board of Supervisors
County of Santa Barbara

Attachments

Attachment 1 - APN Map from FTT Application

Attachment 2 - Vicinity Map and Chumash Reservation / Tribe-owned Parcels

Attachment 3 - Property Taxes and Special Assessments Table

cc: Honorable Gray Davis, Office of the Governor
Honorable Barbara Boxer, United States Senator
Honorable Lois Capps, United States Congresswoman
Honorable Jack O'Connell, California State Senator
Honorable Hannah-Beth Jackson, California State Assemblywoman
Honorable Abel Maldonado, California State Assemblyman
Vincent Armenta, Tribal Chairman, Santa Ynez Band of Chumash Mission
Indians of the Santa Ynez Reservation of California
D. Robert Shuman, Deputy Legal Affairs Secretary, Office of the Governor
Sara J. Drake, Deputy Attorney General, State of California
Sharon A. Redthunder, Lead Realty Specialist, Bureau of Indian Affairs
Greg Albright, Caltrans District 5 Director
Steve Price, Caltrans District 5
Solvang City Council
Buellton City Council
Christ Dahlstrom, Santa Ynez River Water Conservation District, Improvement
District No. 1
Bonnie Ottoman, Santa Ynez Community Services District
Santa Barbara County Airport Land Use Commission
Santa Ynez Valley Airport Authority
Diane Waterman, Waterman & Associates
Scott Morgan, Governor's Office of Planning and Research
Brenda Tomaras, California Indian Legal Services
Michael Brown, County Administrator
Scott Ullery, Deputy County Administrator
Stephen Shane Stark, County Counsel
John Patton, Planning and Development Director
Phil Demery, Public Works Director
John Scherrei, County Fire Chief
Jim Thomas, County Sheriff
Peggy Langle, Environmental Health Director
Douglas Allard, Air Pollution Control Officer
Kenneth Pettit, County Assessor's Office
Clerk of the Board
P&D Santa Ynez Planning Area – Chumash File (Dave Ward)