

**SANTA BARBARA COUNTY  
BOARD AGENDA LETTER**



Clerk of the Board of Supervisors  
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Santa Barbara, CA 93101  
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**Agenda Number:**  
**Prepared on:** 2/1/05  
**Department Name:** County Counsel  
**Department No.:**  
**Agenda Date:** 2/8/05  
**Placement:** Departmental  
**Estimate Time:** 1 hour  
**Continued Item:** NO  
**If Yes, date from:** 2/1/05

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**TO:** Board of Supervisors  
**FROM:** Stephen Shane Stark, County Counsel  
**STAFF CONTACT:** Shane Stark, Jennifer Klein extension 2950  
**SUBJECT:** Appeal of Bureau of Indian Affairs Fee to Trust Decision

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**Recommendation(s):**

That the Board of Supervisors: Consider whether to appeal the decision of the United States Department of Interior -- Bureau of Indian Affairs to take 6.9 acres of land in Santa Ynez into trust for the Santa Ynez Band of Mission Indians.

**Alignment with Board Strategic Plan:**

The recommendation is primarily aligned with actions required by law or business necessity.

**Executive Summary and Discussion:**

On February 1, 2005 the Board of Supervisors, after receiving advice from its legal counsel in closed session, set a public hearing for February 8 on whether to appeal the decision to the Interior Board of Indian Appeals or the Assistant Secretary of Interior (head of the BIA).

The County received the BIA decision (Attachment A) on January 20; a notice of appeal must be filed within 30 days of receipt of the notice, or February 21, 2005. The filing date is jurisdictional and cannot be extended. Estimates of how long it takes the IBIA to process an appeal vary from 6 months to two years.

The BIA is bound by federal regulations, 25 C.F.R. Part 151. The BIA found that the Tribe has demonstrated a need for the land to be taken in trust for two basic reasons.<sup>1</sup>

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<sup>1</sup> The applicable federal regulation is 25 C.F.R. § 151.3 "Land acquisition policy. Land not held in trust or restricted status may only be acquired for an individual Indian or a tribe in trust status when such acquisition is authorized by an act of Congress. No acquisition of land in trust status, ..., shall be valid unless the acquisition is approved by the Secretary. (a) Subject to the

First, the property has historical and cultural significance because of the existence of archaeological sites. Second, because of the development constraints that exist on the Tribe's current reservation, the Tribe needs to manage and develop the property pursuant to its own laws, interests and goals free from land use regulation by State and local governments. (See Decision at p.8.)

Prior to its closed session discussion, the Board received comments from Santa Ynez residents and the attorney for Concerned Citizens of Santa Ynez Valley, who reside in the surrounding community. The citizens, in urging the County to appeal the decision, raised the following points:

- The decision fails to apply the law and statutory policy properly, particularly as to the need for United States to take the property into trust. It is observed that the proposed project could be built under current county zoning and California land use law.
- The environmental review was inadequate under the National Environmental Policy Act (NEPA). The analysis of the impacts of incremental land acquisitions is piecemeal and does not address cumulative impacts of development.
- There is a potential use of the property for gaming, particularly as a parking lot to serve the casino. This raises issues of compliance with the Indian Gaming Regulatory Act, the consent of the Governor, and deeper scrutiny by the BIA.

The citizens urged that the BIA require, as a condition of taking the 6.9 acres into trust, a limit on the use of the property to the uses described in the Tribe's application – a cultural center and museum, an open community/commemorative park focused on the history of the Chumash people and serving as a buffer for the archaeological village site, and a “correlative commercial retail building which would help generate revenues for upkeep of the cultural center and park.” (See Decision at p.8.) The attorney for citizens stated that in the long term the County, the Tribe, and the community would be best served by an enforceable government-to-government agreement addressing the impacts of future tribal land acquisition and development. He nonetheless urged the County to appeal.

The Tribe, in a letter to the members of the Board, requests the County not to appeal. (See Attachment B.) The Tribe states that in all probability the BIA's decision will be upheld by the IBIA under its interpretation of applicable regulations and case law. The Tribe advises that an appeal would not be conducive to government-to-government negotiations.

## LITIGATION COST AND RISKS

It is more likely than not that the IBIA will uphold the agency decision, based on past administrative decisions and case law. Lawyers for all parties agree on this general assessment. The County has a plausible, although uphill, case.

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provisions contained in the acts of Congress which authorize land acquisitions, land may be acquired for a tribe in trust status: (1) When the property is located within the exterior boundaries of the tribe's reservation or adjacent thereto, or within a tribal consolidation area; or (2) When the tribe already owns an interest in the land; or (3) When the Secretary determines that the acquisition of the land is necessary to facilitate tribal self-determination, economic development, or Indian housing.”

- It is highly unlikely the Department of Interior will deny trust status to land currently owned in fee by a federally recognized sovereign Indian Tribe to be used for a cultural site and museum.
- It is reasonable to ask for a condition limiting the development to that described in the application. Although this is not a standard practice, conditioning trust status so as to balance the tribal interests with those of the surrounding local jurisdictions is not impermissible.
- We believe the environmental analysis for the project is flawed and subject to challenge in federal court. Please keep in mind that a successful NEPA challenge is not a decision on the merits of the proposed fee to trust acquisition; further, that environmental laws are intended to ensure that the public and agency are informed, not for purposes of delay.

Costs vary with the intensity of effort, the extent of briefing and evidentiary hearings, use of experts and outside counsel. A notice of appeal can be filed without major staff effort; the bulk of the costs would be incurred at later stages of the administrative process. A rough estimate of litigation costs if outside counsel is used for the appeal is \$50,000 -- \$100,000. Given the potential for a protracted administrative process, costs could be considerably higher. If the appeal to IBIA was unsuccessful, a judicial challenge to the decision and environmental review could be filed in federal court.

County Counsel advises that an agreement respecting the 6.9 acre property and a broader government-to-government agreement between the Tribe and the County are in the long term best interest of all parties – there is more to be gained by negotiation and collaboration than by litigation. We are unlikely to conclude any sort of agreement with the Tribe prior to the deadline for appealing the BIA’s decision. Thus, if the Board determines to go forward with an appeal, it would need to file a notice of appeal by February 21.

**Mandates and Service Levels:**

Whether to appeal is discretionary.

An appeal will require County Counsel staff time, but will not significantly affect service levels.

**Fiscal and Facilities Impacts:**

County Counsel salary for time spent on an appeal would be paid from the General Fund, County Counsel Budget. Similarly, staff time from other departments, e.g., County Administrator, Planning & Development, would be paid from the General Fund and departmental budgets.

If it is determined to use outside counsel, estimated cost would be \$50,000 - \$100,000. This would be a General Fund expense and a financing source would need to be determined.

**Special Instructions:** None

**Concurrence:** County Administrator

