

County Of Santa Barbara



Mona Miyasato
County Executive Officer

105 East Anapamu Street, Room 406
Santa Barbara, California 93101
805-568-3400 • Fax 805-568-3414
www.countyofsb.org

Executive Office

September 23, 2015

Ms. Amy Dutschke
Regional Director
Bureau of Indian Affairs, Pacific Regional Office
2800 Cottage Way, Room 2820
Sacramento, CA 95825

E-mail: amy.dutschke@bia.gov

Re: Santa Ynez Band of Chumash Mission Indians: Fee-to-Trust Application for Properties known as Mooney and Escobar

Dear Ms. Dutschke:

This comment letter is submitted by the County of Santa Barbara (County) in response to the Santa Ynez Band of Chumash Mission Indians' Fee-to-Trust Application for parcels known as the Mooney and Escobar properties (Trust Acquisition). Our comments are in accordance with 25 Code of Federal Regulations (CFR) Section 151.10 and 151.11. We are providing the information requested in order for the Secretary of the Interior to assess the impact of the removal of the subject property on local government.

The Santa Barbara County Board of Supervisors has not taken a formal position on the requested Trust Acquisition and will consider this request via a recently established Board of Supervisor's Ad Hoc Subcommittee on the Santa Ynez Band of Chumash Indians Matters which will be meeting with representatives of the Chumash Tribe. However, in the interim, the information requested by the Bureau of Indian Affairs is provided herein.

Introduction

On August 28, 2015, the County of Santa Barbara officially received notification of a *Supplemental Non-Gaming Land Acquisition Application* from the Department of the Interior Bureau of Indian Affairs (BIA). The BIA is seeking comments regarding the proposed trust land acquisition in order to obtain sufficient data that would enable an analysis of the potential impacts on County government, which may result from the removal of Mooney and Escobar from the tax roll and local jurisdiction. Specifically the following information was requested:

- The annual property taxes levied on the property and the amount allocated to the County.
- The current zoning and how proposed uses may impact zoning.
- Any special assessments that are disbursed to the County.
- Any governmental services provided that may be impacted due to removal of properties from the tax rolls.

The Code of Federal Regulations pertaining to requests to have lands taken in trust, 25 CFR Section 151.10, addresses “on-reservation acquisitions” and 25 CFR Section 151.11 addresses “off-reservation acquisitions.” Sections 151.10 and 151.11 both allow the County to provide written comments about the proposed acquisition’s potential impacts on regulatory jurisdiction, real property taxes and special assessments.

This response includes in more detail within comments on those issue and other fee-to-trust criteria as follows:

- Sections 151.10(b) and 151.11(a): the need of the tribe for additional land;
- Sections 151.10(e), 151.11(a), and 151.11(d): impacts resulting from removal of the land from the tax rolls;
- Sections 151.10(f), 151.11(a), and 151.11(d): jurisdictional problems and potential conflicts of land use which may arise; and
- Sections 151.10(h) and 151.11(a): information allowing the Secretary to comply with the National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.* (“NEPA”).

In addition, it is the County’s position that the Mooney and Escobar Trust Acquisition must be processed and evaluated in accordance with regulations addressed in 25 CFR Section 151.11, for “off-reservation acquisitions” as based on a review of the County of Santa Barbara Assessors’ maps, which illustrates that the Mooney and Escobar properties are not contiguous to the reservation, as a County Road Right-of-Way and State Highway are between the Mooney and Escobar parcels and the reservation.

Background

The County of Santa Barbara (County) recognizes the role and unique interests of tribes, states, counties and other local government to protect all members of their communities and to provide governmental services and infrastructure benefits to all. In addition, the County recognizes and respects the tribal right of self-governance, to provide for tribal members and to preserve traditional tribal culture and heritage. In similar fashion, the County recognizes and promotes its own self-governance to provide for the health, safety, and general welfare of all residents of our communities.

Under the fee-to-trust (FTT) process (Code of Federal Regulations Section 151) tribes may request the federal government to take additional land owned by them in fee into trust. This FTT transfer process converts land from private or individual title to federal title, holding it in trust for exclusive use by an American Indian Tribe and removing it from local regulatory jurisdiction. As a result, the land becomes exempt from State and local government taxes and land use regulations. In addition to the financial losses to the County and other taxing entities, the status of trust land often creates jurisdiction confusion

in law enforcement, land use planning, social service delivery, and emergency services. Additionally, the loss of local control can result in land uses that conflict with the County's General Plan, Community Plans, and surrounding uses. This loss of local control to regulate land uses without appropriate mitigation can congest County roadways, impact water quality in waterways, reduce water supply to adjacent properties, degrade habitat, air quality and the environment and create public nuisance complaints.

Project Description/Proposed Land Use

According to the August 24, 2015 notice provided to the County by the United States Department of the Interior, the subject properties encompass approximately 2.11 acres and are referred to as Assessors Parcels Numbers: 143-242-01 and 143-242-02 (Mooney) and 143-252-01 and 143-252-02 (Escobar). The notice states that the properties are adjacent to Highway 246 which runs along the Santa Ynez reservation and is contiguous to the reservation. The project description further states that the Tribe has no plans to change the use of the subject property. Presently ornamental landscaping exists on the properties. The notice further indicates that placing the parcels into trust would enable the Tribe to irrigate the landscaping with recycled water generated by the Tribe's wastewater treatment plant instead of the potable water that is currently used. The stated purpose of the proposed fee to trust transfer is to maintain such uses under the jurisdiction of the Tribe for future long range planning, including the ability to use its resources in a more environmentally proactive way. Further the notice indicates the acquisition will serve to enhance the Tribe's land base which supports the Tribe's self determination

Proposed Trust Acquisition is "off-reservation"

The Proposed Trust Acquisition is entirely separated from the existing reservation by either State Highway 246 or a County road Right-of-Way (Valley Street) which runs along the northern boundary of the Tribe's Reservation. The Trust Acquisition, therefore, does not appear to have any shared boundaries with the Reservation. The BIA thus must utilize the process for off-reservation discretionary trust acquisitions in assessing the Mooney and Escobar Trust Acquisition.

Compatibility with the County's General Plan, Santa Ynez Community Plan, and County land use regulations

The Mooney and Escobar properties are located within the Santa Ynez Urban Area, and have a Land Use Designation of "General Commercial" and Zoning of "C-2" (Retail Commercial). Both properties are also within the Design Control Overlay, therefore requiring Design Review per the County's land use regulation. Sanja de Cota Creek, a US Geological Survey "blue line creek" and US Fish and Wildlife Service, National Wetlands Inventory designated stream runs through portions of both properties. Further, there is a trail and bikeway proposed along Highway 246 shown on the maps which could be impacted by future uses of the properties.

Tribal applications to take land into federal trust often do not specify and limit the uses for the proposed site, and even when they do, a tribe is not bound to those uses once the land is taken into trust. This is the case with the Mooney and Escobar properties, where it is indicated in the project description that "the proposed fee to trust transfer is to maintain such uses under the jurisdiction of the Tribe for future long range planning, including the ability to use its resources in a more environmentally proactive way." The notice then indicates the property will serve to enhance the Tribe's land base which supports the

Tribe's self-determination. The description is vague and calls into question the short and long term uses of the property. Therefore, the County of Santa Barbara is unable to fully assess the potential jurisdictional problems and conflicts of land use which may arise. If the properties are taken into trust and the Tribe chooses to change the uses on the site, the County would have no regulatory authority to play a role in the approval of such uses.

It should also be noted that the uses specified in the application by the Tribe may be achieved, with the property remaining in fee, via the County's land use process. Specifically, the project description notes that "by placing the parcels into trust the Tribe is able to irrigate the landscaping with recycled water generated by the Tribe's wastewater treatment plant instead of the potable water that is currently used." It is not clear that it is necessary to take this property into trust to irrigate properties via the Tribe's wastewater treatment plant.

Need for Environmental Review

Factors to be considered with a trust acquisition include the extent to which an applicant has provided information sufficient to allow the Secretary to comply with NEPA. The notice, however, contains no information regarding NEPA and the BIA has not provided any additional environmental review document.

Removing property from the jurisdiction of a state and county is a major federal action that triggers some NEPA analysis. At a minimum, the following impacts should be considered in such an analysis:

- Provision of public safety services including law enforcement, fire protection, and emergency medical services on the properties;
- Avoidance of negative impacts to the Sanja de Cota Creek;
- Impacts to planned circulation for bicycles and pedestrians;
- Loss of taxes and special assessments used to fund countywide services; and
- The cumulative impacts of the multiple fee-to-trust acquisitions requested by the Tribe on the County tax rolls, public services, and land use planning.

Need for additional land to be taken into Trust

The notice for the Trust Acquisition does not articulate a need for transferring the Mooney and Escobar properties into trust. The notice states under the proposed land use section that the additional 2.11 acres will "enhance the Tribe's land base" and allow the Tribe to utilize its resources in a more environmentally proactive way. As to the former, there is no information regarding how taking the additional 2.11 acres into trust enhances the Tribe's land base. The Tribe currently has an approximately 138-acre Reservation and already has two other properties totaling over 1,500 acres in the trust process.

As to the latter, it is unclear that the Tribe needs to take the properties into trust to accomplish the goal of using recycled water for irrigation, as discussed above; also that goal is not the type of "need" contemplated by the fee-to-trust process. The notice does not articulate need, necessity arising from existing circumstances, nor a clear economic benefit that justifies transferring the Mooney and Escobar properties into trust.

Loss of Tax Revenue

The County currently provides major public services throughout the Santa Ynez Valley. These include law enforcement, fire protection, emergency medical response, and roadway access and maintenance. Moving the property from fee ownership into trust will remove it from the tax rolls. The result will be a loss of local tax revenue for the County, schools, and other taxing entities.

Per the County Assessor, the 2014 assessed value of Mooney and Escobar is \$2,138,467. Assuming no additional development of the property, if the land is taken into trust and removed from the tax rolls, the County of Santa Barbara will lose approximately \$24,198 annually. This is inclusive of funding to the Fire Protection District, Flood Control District, Cemetery District and School Districts.

Conclusion

Thank you for the opportunity to comment on the Mooney and Escobar Trust Acquisition. The County has outlined several issues with the proposal as discussed in this letter. If the Mooney and Escobar properties remains in fee and are utilized for the purposes proposed in the Trust Acquisition application, they would continue to contribute to the financial strength of the entire community, including the Tribe, while respecting local concerns for development and avoiding potential jurisdictional and land use conflicts in the future.

If you have any questions concerning these comments please contact Terri Nisich, Assistant County Executive Officer, at 805-568-3400.

Sincerely,

Mona Miyasato
County Executive Officer

cc: Members of the Board of Supervisors
Vincent Armenta, Tribal Chair, Santa Ynez Band of Chumash Indians
Congresswoman Lois Capps, California 24th Congressional District
Senator Barbara Boxer
Senator Dianne Feinstein
Thomas Walters, Walters and Associates