

# Committee on Natural Resources

Rob Bishop Chairman  
Mark-Up Memorandum

July 11, 2016

To: All Natural Resources Committee Members

From: Majority Committee Staff,  
Subcommittee on Indian, Insular and Alaska Native Affairs (x6-9725)

Mark-Up: H.R. 1157 (Rep. Doug LaMalfa), To authorize the Secretary of the Interior to take land into trust for the benefit of the Santa Ynez Band of Chumash Mission Indians, and for other purposes.  
**July 12-13, 2016; 1324 Longworth HOB**

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## **H.R. 1157, “Santa Ynez Band of Chumash Mission Indians Land Transfer Act of 2015”**

### **Summary of the Bill**

H.R. 1157 provides for the transfer of title to an approximately 1,400-acre tract of land known as “Camp 4” to the United States to be held in trust for the benefit of the Santa Ynez Band of Chumash Mission Indians (“Chumash” or “tribe”). In 2014, the Bureau of Indian Affairs approved an application filed by the tribe to place Camp 4 in trust under the agency’s regulatory procedures (25 CFR Part 151) but the title has not transferred to the United States pending the resolution of an administrative appeal filed by Santa Barbara County and private citizens. Lands placed in trust under H.R. 1157 would not be eligible for gaming regulated under the Indian Gaming Regulatory Act (IGRA)<sup>1</sup>.

### **Cosponsors**

Reps. Tony Cardenas (D-CA), Tom Cole (R-OK), Paul Cook (R-CA), Jeff Denham (R-CA), Tom McClintock (R-CA), Steven Knight (R-CA), Betty McCollum (D-MN), Devin Nunes (R-CA), Raul Ruiz (D-CA), Norma Torres (D-CA), David Valadao (R-CA), Juan Vargas (D-CA), and Mimi Walters (R-CA).

### **Background**

The Santa Ynez Reservation was established in 1901 under the authority of the Act of January 12, 1891, for members of the Chumash tribe. European diseases took a large toll on the original population of the Chumash people.<sup>2</sup> Today, the tribe has about 140 enrolled members and more than a thousand descendants (i.e., individuals of Chumash ancestry who do not qualify for membership in the tribe), and the tribe’s reservation of about 138 acres is located in Santa

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<sup>1</sup> 25 U.S.C. 2701 et seq.

<sup>2</sup> *Tiller’s Guide to Indian Country*, 3<sup>rd</sup> Edition. Veronica E. Valarde Tiller at 340 (2015).

Ynez (Santa Barbara County).<sup>3</sup> The tribe constructed a casino and hotel resort on its reservation pursuant to IGRA, which facility has lifted the tribe from historic poverty to economic success. With other private investments in the region, the tribe has become one of the largest employers in Santa Barbara County.<sup>4</sup>

The current reservation also hosts dense tribal housing that was originally built through Department of Housing and Urban Development low income grant programs (grants obtained prior to the tribe's successful operation of gaming under IGRA). The tribe reports that relatively few of its members reside on the reservation.

In 2010, the tribe purchased a 1,400-acre tract of land known as Camp 4, located about two miles from the reservation in an unincorporated area of Santa Barbara County,<sup>5</sup> from the Fess Parker estate. The tribe has testified it intends to use Camp 4 for suitable tribal housing for its current and future members. At present, the landscape of Camp 4 is mainly agricultural in character. Under California state law and Santa Barbara County zoning rules – including the Williamson Act – the property may not be easily converted to the kind of developed status the tribe says it desires to pursue. (The Williamson Act provides certain property tax relief for a California landowner who agrees to maintain his property as open space or for agricultural uses.)

To divest the state and county of its regulatory, zoning, and tax jurisdiction over Camp 4, the Chumash have requested legislation and also applied with the Bureau of Indian Affairs (BIA) to acquire title to the land in trust.

In December 2014, the Pacific Region Director for the BIA approved an application by the tribe to accept title to the Camp 4 property in trust after making a Finding of No Significant Impact under an Environmental Assessment.<sup>6</sup> The Environmental Assessment describes the reasonably foreseeable consequence of the trust acquisition as being for “tribal housing on five or one-acre lots and associated facilities. The housing project would include up to 143 residential units, as well as supporting infrastructure including on-site wastewater treatment and reuse of recycled water and development of groundwater to meet potable water demands.”<sup>7</sup>

It is important to note that when the BIA exercises its discretionary authority to acquire land in trust (typically under regulations developed pursuant to Section 5 of the Indian Reorganization Act of 1934, or “IRA”),<sup>8</sup> the National Environmental Policy Act (NEPA) is triggered. Under its regulations, the agency also considers certain other criteria.<sup>9</sup> In contrast, when Congress legislatively mandates the acquisition of land in trust, NEPA is not applied, and no BIA assessment of local impacts is performed. The California State Association of Counties

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<sup>3</sup> Written statement of Vincent Armenta, Chairman, Santa Ynez Band of Chumash Indians, Subcommittee on Indian and Alaska Native Affairs oversight hearing on “Indian lands: Exploring resolutions to disputes concerning Indian tribes, state, and local governments, and private landowners over land use and development,” August 2, 2012.

<sup>4</sup> Tiller's Guide to Indian Country 3rd Edition. Veronica E. Valarde Tiller at 340 (2015).

<sup>5</sup> <http://www.chumashea.com/wp-content/uploads/2013/08/site-and-vicinity.pdf>

<sup>6</sup> <http://www.chumashea.com/>

<sup>7</sup> <http://www.chumashea.com/wp-content/uploads/2014/10/FONSI.pdf> at 5.

<sup>8</sup> 25 U.S.C. 465

<sup>9</sup> See 25 C.F.R. 151.10 and 151.11, regarding need for trust land, justification, and impacts on others.

and the National Association of Counties - while not directly weighing in on H.R. 1157 – have previously testified that the BIA’s fee-to-trust process is broken.<sup>10</sup>

Under rules and policies developed by the Department of the Interior, a decision by a Regional Director of the BIA (as in this case) to acquire land in trust (for non-gaming purposes) may be appealed administratively.

Following the BIA’s approval of the tribe’s application to acquire Camp 4 in trust, Santa Barbara County voted 3-2 to file an administrative appeal and to file litigation against the BIA action.<sup>11</sup> In addition, other individuals and nearby property owners also filed an administrative appeal, which argues among other things that the BIA violated NEPA.<sup>12</sup>

It is unlikely that title to Camp 4 will transfer in federal trust until the appeals are resolved. A timeframe for the exhaustion of appeals in this case is uncertain.

Following a Subcommittee hearing on H.R. 1157 on June 17, 2015, the County of Santa Barbara and the tribe engaged in a number of meetings in an effort to resolve differences and concerning the placement of land in trust for the tribe. The County formed an ad hoc Subcommittee to facilitate these discussions,<sup>13</sup> which two of the County supervisors (including the one whose district includes Camp 4) characterize as ongoing. The tribe continues to urge the Committee to report and Congress to enact H.R. 1157.

### **Analysis of H.R. 1157**

H.R. 1157 directs the Secretary to acquire Camp 4 in trust for the benefit of the Chumash tribe. Legislative acquisition of Camp 4 in trust would waive NEPA and render the administrative appeal over BIA’s alleged violation of NEPA moot.

Except for a prohibition on gaming, H.R. 1157 imposes no restriction on the tribe’s use of Camp 4, and the bill clarifies that certain California state laws including the Williamson Act (California Land Conservation Act of 1965, Government Code Section 51200, et seq.) shall no longer apply to Camp 4.

The bill also provides that nothing in the Act affects any water right of the tribe, or terminates any right-of-way or right-of-use in existence before the date of enactment of the Act.

The Committee recently received a letter from an attorney for an individual who owns property adjacent to Camp 4, access to which is provided by an easement over Camp 4. The letter expresses concern that the right-of-way language in H.R. 1157 does not adequately protect the property owner’s easement rights, which are confirmed by the Santa Barbara County Superior Court.

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<sup>10</sup> See, for example, statements of Diane Dillon, Napa County Supervisor, on behalf of CSAC, and Matthew D. Chase, Exec. Dir. Of NaCO, “*Carcieri*: Bringing Certainty to Trust Land Acquisitions,” Senate Committee on Indian Affairs hearing, S. Hrg. 113-214, Nov. 13, 2013.

<sup>11</sup> <http://www.independent.com/news/2015/jan/26/county-appeals-federal-camp-4-approval/>

<sup>12</sup> See Opening Brief of Appellant Santa Ynez Valley Concerned Citizens, U.S. Department of the Interior, Assistant Secretary of the Interior – Indian Appeals, December 31, 2015.

<sup>13</sup> <https://www.countyofsb.org/tribal-matters.sbc>

## **Cost**

While no official CBO score has been received, the committee does not anticipate the bill having an effect on the federal budget.

## **Administration Position**

At the June 17, 2016 Subcommittee on Indian, Insular and Alaska Native Affairs hearing on the bill, the Administration testified, “The Department supports mandatory fee-to-trust legislation but takes no position on H.R. 1157 given that the 5 parcels identified in the H.R. 1157 are currently on appeal to the Assistant Secretary for Indian Affairs at the Department.”<sup>14</sup>

## **Anticipated Amendments**

An amendment t to clarify Section 2(c) relating to protection of rights-way-of or rights-of-use existing prior to the enactment of this legislation is possible.

## **Effect on Current Law (Ramseyer)**

None.

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<sup>14</sup> <http://naturalresources.house.gov/uploadedfiles/blacktestimonyfinal.pdf>.