

WRITTEN TESTIMONY FOR THE RECORD

PRESENTED BY SANTA BARBARA COUNTY EXECUTIVE OFFICER, MONA MIYASATO

ON BEHALF OF THE COUNTY OF SANTA BARBARA BOARD OF SUPERVISORS

BEFORE THE

UNITED STATES HOUSE OF REPRESENTATIVES COMMITTEE ON NATURAL RESOURCES –
SUBCOMMITTEE ON INDIAN, INSULAR AND ALASKA NATIVE AFFAIRS

IN THE MATTER OF H.R. 1157 (LAMALFA)

SANTA YNEZ BAND OF THE CHUMASH MISSION INDIANS LAND TRANSFER ACT OF 2015

JUNE 17, 2015

Thank you Subcommittee Chairman Young, Ranking Member Ruiz, and Members of the Subcommittee for the opportunity to testify today. My name is Mona Miyasato and I am the County Executive Officer for the County of Santa Barbara. This testimony is submitted on behalf of County of Santa Barbara and reflects the adopted policy position of the County Board of Supervisors.

The County of Santa Barbara has adopted a legislative policy which 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.

H.R. 1157 would take into trust five parcels of land totaling approximately 1,427.78 acres in the Santa Ynez Valley (commonly known as “Camp 4”) for the benefit of the Santa Ynez Band of Chumash Indians. Camp 4 is over 10 times larger than the existing 138 acre Chumash Reservation. This would have substantial, negative impacts on our community.

The County of Santa Barbara respectfully opposes H.R. 1157 for the following reasons:

- The County has a pending appeal of the decision by the Bureau of Indian Affairs to accept Camp 4 into trust and the BIA’s related decisions under the National Environmental Policy Act (NEPA);

- The purpose of the Code of Federal Regulations (CFR) administrative appeal process is to address concerns of local entities and residents, including loss of tax revenue, lack of compliance with NEPA, insufficient environmental mitigation and conflicts with local land use regulations;
- H.R. 1157 would short-circuit this administrative process and prevent the County and its residents from addressing these concerns; and
- H.R. 1157 does not rule out any use of the property other than gaming, while the BIA's administrative process proposes residential use and is more focused.

The County of Santa Barbara therefore requests that instead of enacting H.R. 1157, Congress allow its regular administrative appeal process to proceed.

Pending Appeal

On December 24, 2014, the BIA issued a Notice of Decision to accept Camp 4 into trust. The County of Santa Barbara submitted its appeal on January 21, 2015. In that appeal, the County discusses the shortcomings of the BIA's review, which must include appropriate weighing of eight required factors detailed in the CFR and adequate environmental review and mitigation. Those eight factors are attached to this testimony. This bill would bypass that appeal review.

A few areas of significant concern with the fee-to-trust decision include the following:

- **Need for the Land and Purposes of Use:** The present BIA regulations provide inadequate guidance as to what constitutes legitimate tribal need for a trust land acquisition. Two alternatives have been identified in the fee-to-trust application, providing housing for tribal members, the stated purpose of the Fee-to-Trust application. One alternative requires 793 acres for residential homes and infrastructure; the other requires 194 acres for homes and infrastructure. Given the stated need for only a fraction of the acreage requested to be taken into trust for housing, the County has questioned why the 1,400 acres need to be taken into trust.

Also, in the second alternative, 30 acres would be dedicated for Tribal Facilities including a Community Center with Banquet Hall/Exhibition Facility, resulting in potentially 400 visitors per event, with two events per week, or up to 800 visitors to the Valley each week. The analysis by the BIA did not discuss the facility structure or the purposes for which it will be used and therefore, could not fully assess the land use conflicts.

- **Impact on County Tax Rolls:** The County projected in FY2012/13 that it would lose up to \$311 million in tax revenue over a fifty year period if the land is taken into trust and developed. In addition, the County would lose mitigation fees required to be paid by developers for provision of transportation improvements, parks, fire protection and other public services. The BIA decision regarded the tax loss as insignificant given the financial

contributions by the Tribe to the community. However, the County provides major public services to the Camp 4 area, including law enforcement, fire protection, emergency medical response and roadway access and maintenance. The proposed development will increase the number of residents and employees in the area that use County parks, schools, roads and public services. The need for County services would expand yet the County would not be able to collect property taxes or other special assessments that would pay for those additional services.

- **Jurisdictional and Land Use Conflicts:** The development of 143 residences and over 12,000 square feet of tribal facility with parking for 250 cars would constitute a change in the current land use that is inconsistent with the surrounding uses. Essentially, it would be an urban development in the middle of a rural area. Given that the zoning is currently AG-II-100 (agriculture with a minimum parcel size of 100 acres), housing development at 1 residence per acre, or 1 residence per 5 acres, would result in potentially increasing density 20 to 100 times what is currently allowed. The development contravenes rural area policy countywide and is incompatible with the County's General Plan, Santa Ynez Community Plan and land use regulations. Further, the property has been preserved for agricultural use by a Williamson Act Contract since at least 1971. In August of 2013 the Tribe submitted an application for non-renewal meaning the contract will expire on December 31, 2022. On July 1, 2013 the Tribe passed Resolution 931 which requires compliance with the existing Williamson Act Contract until the contract expires.

The BIA noted that the Chumash Tribe has consistently been cooperative with local government and service providers to mitigate adverse effects and cited agreements with County Fire and Sheriff's Office. Those agreements, however, relate to *services on the existing Reservation* and the ongoing impacts to that development, not Camp 4. The County is grateful to the Chumash Tribe for their willingness to work collaboratively to achieve these service agreements. In the Fire Department agreement, however, the Tribe's agreement to provide an aerial ladder truck for its planned 12-story tower Casino expansion only came after the County requested it as mitigation to the project; it was not included as part of the Tribe's environmental evaluation or mitigation. In this case, the identification of mitigation by the County Fire personnel resulted in a better outcome for the Tribe and community members. Other issues raised by the County regarding the Casino expansion, however, were not addressed by the Tribe.

- **Compliance with NEPA and Environmental Mitigation:** The fee-to-trust acquisition raises substantial questions about the environmental impacts of the action as to its context and intensity. The County identified a need for the environmental document to be elevated from the current level proposed by the BIA of an Environmental Assessment (EA) to an Environmental Impact Statement (EIS).

The loss of agricultural land is of great significance to the State, region and locality as agriculture provides economic and environmental benefits to the public. The development will bring more residents, employees and visitors to a largely agricultural area and change

the land use. This change implicates unique geographic considerations such as conversion of prime agricultural farmland, threatens land use and regulatory requirements imposed for the protection of the environment and the community, impacts public health and safety concerns, such as the demand for services, groundwater and wastewater resources, air quality, and traffic control, impacts threatened or endangered species habitat and other unique habitat involving oak trees, and creates controversy as shown by the debate among many knowledgeable, interested parties as to the environmental effects of the project.

A particular area of concern relates to Groundwater Resources. Santa Barbara County and the State of California are in severe drought conditions. The Environmental Assessment acknowledged the past designation of an overdraft in the Santa Ynez Uplands Groundwater Basin but did not analyze the potential for Camp 4 to exacerbate that overdraft. The EA did not analyze long-term water supply.

In addition, mitigation measures proposed to date do not sufficiently minimize or avoid environmental impacts or adequately protect against significant adverse impacts of the proposed action. The measures suggested in the EA do not provide the detail and discussion required to support a finding of no significant impact.

Bypass of Administrative Process through H.R. 1157

H.R. 1157 would short-circuit the administrative appeal process and prevent the County and its residents from addressing the concerns just described. Another example of this relates to the identical real property descriptions in both H.R. 1157 and the BIA's Notice of Decision, dated December 24, 2014. These are unclear and do not adequately address the property interests of the County or nearby residents in roadway rights-of-way. In its pending appeals with the Interior Board of Indian Appeals, the County has raised this question about County rights of way throughout Camp 4 and whether those rights of way are held in fee or easement. The appeal process provides an opportunity to resolve these legal questions. If H.R. 1157 is enacted, though, neither the County nor any County resident would have the opportunity to clarify their property interests in those roads.

Broadness of H.R. 1157 and Conflicts with BIA Process

H.R. 1157 does not rule out any use of the property other than gaming. The legislative approach is broader than the BIA's process. The existing process, with its combination of evaluation of factors specified in 25 CFR Sections 151.10 and 151.11 and NEPA, provides some comfort to the community of the proposal, given what was studied and allowed per the BIA process. The legislation only rules out gambling but does not specify other uses.

Reforms to BIA Process are Needed

While the County supports the BIA's administrative process, we also strongly support the efforts of the California State Association of Counties, and their extensive work on behalf of all California Counties, to achieve comprehensive fee to trust reform and improve the role of local government in the fee-to-trust process. Therefore, it is respectfully requested that the following reforms of the existing process be considered.

- Often local governments are afforded limited, and sometimes late, notice of a pending trust land application. In our case, the Notice of Decision was issued on Christmas Eve, December 24, 2014. Our staff resorted to checking the BIA's website daily to ensure notice given the 30-day appeal period. The notice first came to our attention as a courtesy from Chumash Tribe members, followed by mailed notices in subsequent days from the BIA. Improved notice is needed to ensure adequate time for meaningful input, as well as reasonably detailed information early on to affected local governments, as well as the public, about the proposed uses. Broad notice of trust applications should allow at least 90 days to respond, compared to the current 30 day requirement.
- There is a lack of standards of any objective criteria in fee-to-trust decisions, which has been criticized by local governments. For example, the BIA requests only minimal information about the impacts of such acquisitions on local communities and trust land decisions are not governed by a requirement to balance the benefit to the tribe against the impact to the local community. As a result, there are significant impacts on communities with consequent controversy, delay and distrust of the process.
- Regulations should provide adequate guidance as to what constitutes legitimate tribal need for trust acquisitions. There is now the stipulation that the land is necessary to facilitate tribal self-determination, economic development or Indian housing. These standards can be met by virtually any trust land request.
- Under Part 151, the BIA does not mention input by third parties even though individuals or communities as a whole may experience negative impacts, although it will accept and review such comments. BIA accepts comments only from the affected state and local government with legal jurisdiction over the land and, from those parties, only on the narrow question of tax revenue loss, government services currently provided to the subject parcels and zoning conflicts. The reviews, therefore, do not provide real consultation or an adequate representation of the consequences of the decision.

Conclusion

In conclusion, I respectfully urge members to reject H.R, 1157. As stated, this would bypass the administrative appeal process, whose purpose is to address concerns of local entities and residents, including loss of tax revenue, lack of compliance with NEPA, insufficient environmental mitigation and conflicts with local land use regulations. Also, H.R. 1157 does not rule out any use of the property other than gaming, while the BIA's administrative process is less broad, focusing on the uses of the site, namely residential housing. Furthermore, I

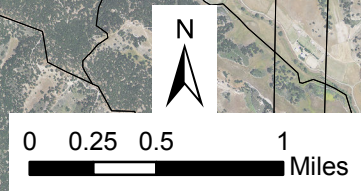
respectfully request that reforms to the existing process be considered in the future to improve local government involvement, which can reduce significant impacts on communities and reduce controversy, delay and distrust of the process.

Thank you for considering my testimony. Should you have questions regarding my testimony, the policy position of the Santa Barbara County Board of Supervisors, or if I can be of further assistance, I can be contacted at mmyasato@countyofsb.org or at (805)568-3404.

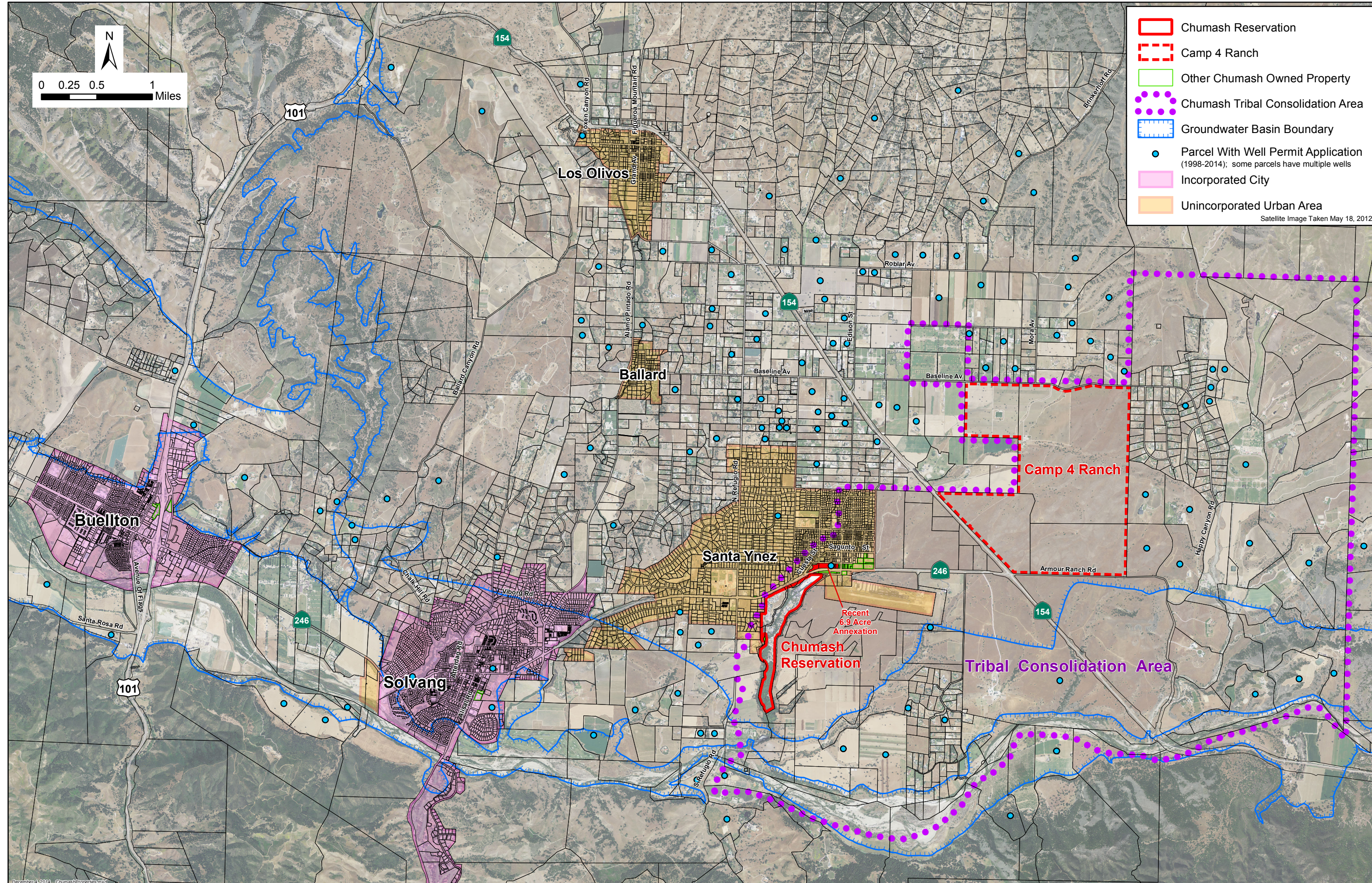
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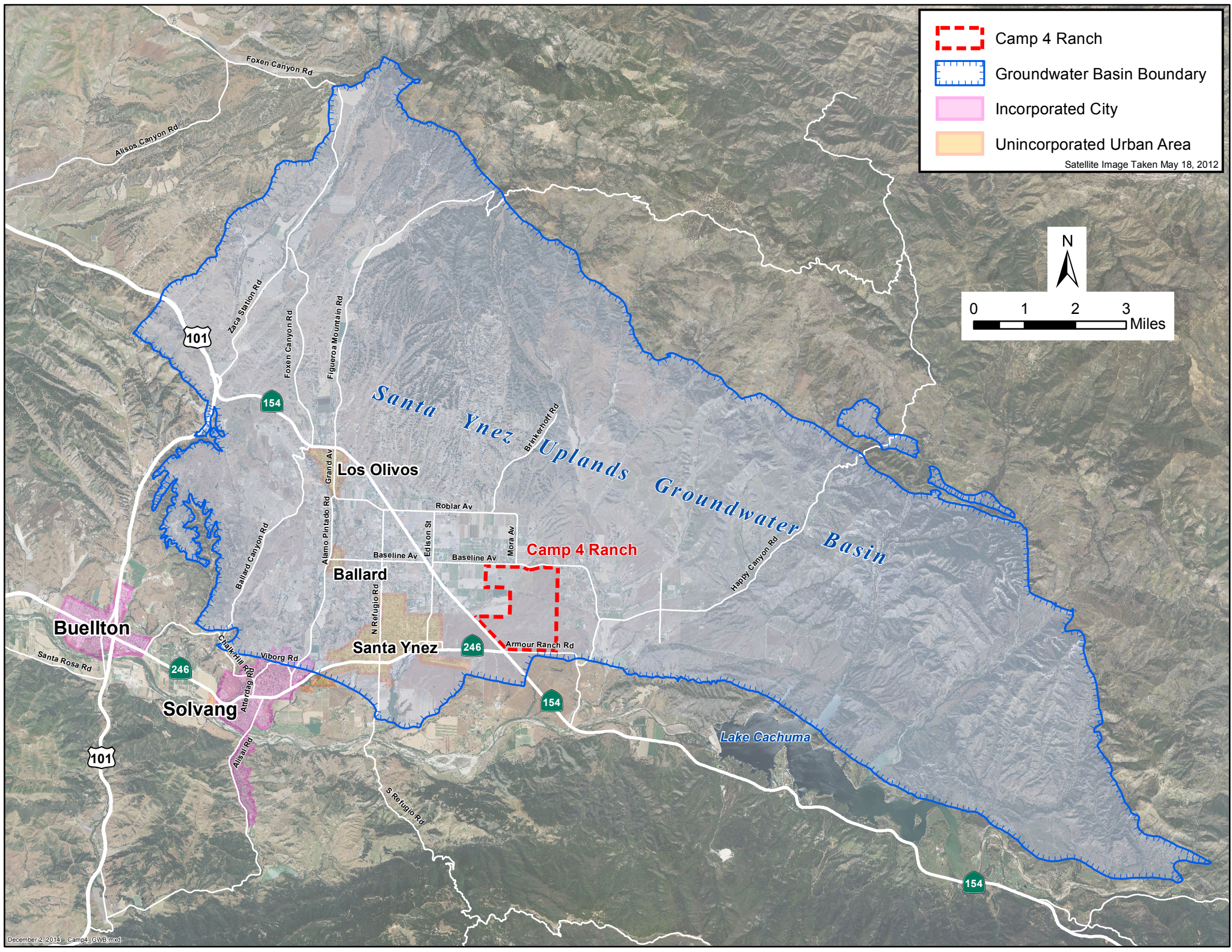
25 CFR Sections 151.10 and 151.11

Maps



- Chumash Reservation
 - Camp 4 Ranch
 - Other Chumash Owned Property
 - Chumash Tribal Consolidation Area
 - Groundwater Basin Boundary
 - Parcel With Well Permit Application (1998-2014); some parcels have multiple wells
 - Incorporated City
 - Unincorporated Urban Area
- Satellite Image Taken May 18, 2012





-  Camp 4 Ranch
-  Groundwater Basin Boundary
-  Incorporated City
-  Unincorporated Urban Area

Satellite Image Taken May 18, 2012



TITLE 25 -- INDIANS

CHAPTER I -- BUREAU OF INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

SUBCHAPTER H -- LAND AND WATER

PART 151 -- LAND ACQUISITIONS

§ 151.10 On-reservation acquisitions.

Upon receipt of a written request to have lands taken in trust, the Secretary will notify the state and local governments having regulatory jurisdiction over the land to be acquired, unless the acquisition is mandated by legislation. The notice will inform the state or local government that each will be given 30 days in which to provide written comments as to the acquisition's potential impacts on regulatory jurisdiction, real property taxes and special assessments. If the state or local government responds within a 30-day period, a copy of the comments will be provided to the applicant, who will be given a reasonable time in which to reply and/or request that the Secretary issue a decision. The Secretary will consider the following criteria in evaluating requests for the acquisition of land in trust status when the land is located within or contiguous to an Indian reservation, and the acquisition is not mandated:

- (a) The existence of statutory authority for the acquisition and any limitations contained in such authority;
- (b) The need of the individual Indian or the tribe for additional land;
- (c) The purposes for which the land will be used;
- (d) If the land is to be acquired for an individual Indian, the amount of trust or restricted land already owned by or for that individual and the degree to which he needs assistance in handling his affairs;
- (e) If the land to be acquired is in unrestricted fee status, the impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls;
- (f) Jurisdictional problems and potential conflicts of land use which may arise; and
- (g) If the land to be acquired is in fee status, whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status.
- (h) The extent to which the applicant has provided information that allows the Secretary to comply with 516 DM 6, Appendix 4, National Environmental Policy Act Revised Implementing Procedures, and 602 DM 2, Land Acquisitions: Hazardous Substances Determinations. (For copies, write to the Department of the Interior, Bureau of Indian Affairs, Branch of Environmental Services, 1849 C Street NW, Room 4525 MIB, Washington, DC 20240.)

§ 151.11 Off-reservation acquisitions.

The Secretary shall consider the following requirements in evaluating tribal requests for the acquisition of lands in trust status, when the land is located outside of and noncontiguous to the tribe's reservation, and the acquisition is not mandated:

(a) The criteria listed in Section 151.10 (a) through (c) and (e) through (h);

(b) The location of the land relative to state boundaries, and its distance from the boundaries of the tribe's reservation, shall be considered as follows: as the distance between the tribe's reservation and the land to be acquired increases, the Secretary shall give greater scrutiny to the tribe's justification of anticipated benefits from the acquisition. The Secretary shall give greater weight to the concerns raised pursuant to paragraph (d) of this section.

(c) 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.

(d) Contact with state and local governments pursuant to 151.10 (e) and (f) shall be completed as follows: upon receipt of a tribe's written request to have lands taken in trust, the Secretary shall notify the state and local governments having regulatory jurisdiction over the land to be acquired. The notice shall inform the state and local government that each will be given 30 days in which to provide written comment as to the acquisition's potential impacts on regulatory jurisdiction, real property taxes and special assessments.