



**United State Senate  
Committee on Indian Affairs  
838 Hart Senate Office Building  
Washington, D.C.  
Hearing on H.R. 4881 The Old Pascua Community Land Acquisition Act  
Written Testimony of Peter Yucupicio, Chairman  
Pascua Yaqui Tribe  
Tucson, Arizona  
November 17, 2021, 2:30 p.m. EDT**

**I. Introduction**

Lios enchim aniavu, Chairman Schatz, Vice Chair Murkowski, and members of the Committee. My name is Peter Yucupicio, and I am the Chairman of the Pascua Yaqui Tribe of Arizona (“the Tribe”). I am here today to ask for your support to pass H.R. 4881, the Old Pascua Community Land Acquisition Act. This legislation would implement a provision in our recently federally approved compact with the State of Arizona. It is also consistent with our inter-governmental agreement with the City of Tucson and is in line with the established congressional understanding that the Pascua Yaqui Tribe needs to develop a larger land base—in this case, land that is of great cultural and historic importance to the Tribe, while also suitable for economic development that would greatly benefit both the Tribe and the surrounding community in the form of millions of dollars of investment and the creation of thousands of new jobs.

First and foremost, I would like to acknowledge and express our appreciation. Our tribe has a long and substantial history of working with Congressmen and Senators like yourselves, here in Washington D.C., past and present, who have been champions for the Yaqui people. As you know, Congressmen Mo Udall, Ed Pastor, and of course, the late, great, Senator John McCain all sponsored legislation on our behalf, and for that we will always be grateful. These gentlemen worked tirelessly to support our efforts to secure a small land base for our people, obtain federal recognition, and re-affirm our status as a historic tribe with all the attributes of a sovereign nation. We owe a debt of gratitude to these elder statesmen who treated our government-to-government relationship with respect and who have helped our tribe prosper over many decades to where we are today.

I am also happy to report, as you know, that H.R. 4881 passed the House on November 2, 2021, on an overwhelming bipartisan vote of 375-45-1—a testament to the merits of the bill, which will both protect cultural sites of great importance to our people, as well as create hundreds of jobs to benefit not only the Pascua Yaqui, but also the surrounding communities.

**(A) Purpose of the bill/law**

We are here today seeking to have land put into trust for our tribe in our historic community of Old Pascua in accordance with agreements that we have reached with both the State of Arizona and the City of Tucson. In total, this includes approximately 31 acres of land the tribe currently owns in fee. We have two purposes for placing this land into trust: first, to preserve our cultural grounds where we have held religious ceremonies for over one hundred years; and second, to develop economic opportunities for our tribal members and provide the benefits of economic development to the surrounding community. Under the bill, Congress would direct the Department of the Interior to take certain parcels of tribally owned fee land, located in the community of Old Pascua, in Tucson, Pima County, Arizona, into trust for the benefit of the Tribe, for cultural purposes, economic development, and gaming.

Transferring these lands into trust will protect and promote our sacred cultural spaces for our people and support our participation in Yaqui cultural events, and tribal affairs, while also fostering the ongoing transmission of Yaqui knowledge, culture, history and traditions, and the continuity between our past and our future. Equally as important, the trust acquisition will help raise the standard of living in the Old Pascua Community, helping our families to live modestly through economic development, and the promotion of self-sufficiency by extending opportunities for our children, grandchildren, neighbors, and future generations.

The land should be made part of the Tribe's current reservation and Congress should make findings that the proposed fee to trust transfer at Old Pascua would be in the best interest of the Tribe, and that the Tribe has historic, ethnographic, and cultural ties to the land.

**(B) Background on the Pascua Yaqui Tribe**

The Pascua Yaqui Tribe is a federally recognized tribe with a reservation southwest of Tucson, Arizona, recognized pursuant to the Act of September 18, 1978, P.L. 95-375 (92 Stat. 712), as amended, and the Indian Reorganization Act of 1934 (48 Stat. 984) (IRA). The Tribe is an historic tribe with a small, 2,216-acre Reservation established for the use and benefit of the tribe's 22,000 members. The Pascua Yaqui are of an ancient and enduring people, indigenous to this land. The Tribe recognizes cultural affiliation with the Ancestral Sonoran Desert People and with our related cultural communities throughout the Greater Southwest region, including the areas that now make up the United States Southwest and Northwest Mexico. Evidence of the affiliation among Yaqui ancestors and those of other contemporary cultural communities in the region can be found in cultural, ritual, cosmological, linguistic, and other threads of continuity in ancestral places and within our communities today. As the late community leader Anselmo Valencia Tori stated to the U.S. House of Representatives Committee on Natural Resources, Subcommittee on Indian Affairs in 1993, "The aboriginal boundaries of the Yoemem (presently known as Yaqui Indians) stretched from north as far as Durango, Colorado; west as far as Yuma, Arizona, and some parts of California; east through New Mexico and Arizona and south as far as the southern tip of Sonora, Mexico." We have lived in the area, including what is now the southwestern United States and northern Mexico, since time immemorial. As early as the 1690s,

the Tumacácori area became the earliest recorded settlement of Yaquis in what later became Arizona.

Holders of Hiaki (Yaqui) cultural knowledge tell of ancient Yaqui settlements along the river now known as the Santa Cruz, and of trade between Yaqui ancestors and their neighbors. Material evidence of this interaction among the people of the region, including Yaqui ancestors, can be found in the immediate vicinity of Old Pascua Village, and even within the boundaries of the lands proposed for transfer into trust for the Tribe. Ancestors' communities in the Tucson basin and elsewhere in the Arizona Sonoran Desert region, labeled by archaeologists as "Early Agriculture," "Early Ceramic," and "Hohokam" provide evidence of the movement of people and goods throughout the region, including areas now known as Sonora and Arizona. Specifically confirming the associations between the coast of the Gulf of California, where the historically identified Yaqui homeland is found, and the ancient residents of the Old Pascua vicinity, are significant quantities of marine shell from Gulf species found at the Santa Cruz Bend, Square Hearth, and Stone Pipe sites.<sup>1</sup> These sites date primarily to the Early Agriculture and Early Ceramic periods, spanning the years 1200 B.C. to 475 A.D. The Stone Pipe site partly overlaps the western boundary of the lands proposed for transfer into trust for the Tribe. The movement of people and marine shells and other objects of value between the Gulf region and the northern Sonoran Desert region continued throughout the following "Hohokam Millennium," as the ancestors of today's O'odham, Yaqui, and other communities continued to live, move, trade, and interact amongst each other.

Yaqui elders in Old Pascua who were interviewed by Edward H. Spicer starting in the 1930s told the anthropologist that "Their forebearers had roamed the country even before the coming of the Spanish."<sup>2</sup> Knowledge of pre-colonial Yaqui trading and military camps in and around the Tucson area continues to be shared in Yaqui oral tradition. In his 1993 testimony to Congress, Anselmo Valencia Tori reported pre-Spanish Yaqui settlements along the Santa Cruz River where the Tumacacori mission would be located; at a location just north of Old Pascua that was called Val-Gojoria, then Alagua, and is now known as Jaynes Station; and further downstream to the north at the site of the present town of Toltec.<sup>3</sup> When the Spanish invaders made their way north through the Sonoran Desert, they enlisted the aid of knowledgeable Yaqui people who helped to guide them into the northern country that they knew well.

It is no wonder that during eighteenth and early nineteenth centuries, Yaqui people were the second most recorded indigenous people, after the O'odham, in the records of the Spanish colonial missions in what is now southern Arizona and northern Sonora. Yaqui people appear in the mission records as early as the 1720s. In a 1796 census, Yaquis represented approximately

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<sup>1</sup> AZ AA:12:746 [ASM], AZ AA:12:745 [ASM], and AZ BB:13:425 [ASM] (Vokes 1998).

<sup>2</sup> Spicer, Edward H. 1988 *People of Pascua*. University of Arizona Press, Tucson.

<sup>3</sup> Statement of Anselmo Valencia. Part of Pascua Yaqui Status Clarification Act hearing before the Subcommittee on Native American Affairs of the Committee on Natural Resources, House of Representatives, 103 U.S. Congress. April 30, 1993. Accessed at <https://www.govinfo.gov/content/pkg/CHRG-103hhrg69904/pdf/CHRG-103hhrg69904.pdf>

12% of the population both at Tumacacori, in what is now Arizona, and at Cocospera, about 60 miles southwest of present-day Nogales.

In 1775 the Presidio de San Agustin de Tucson was built in present-day downtown Tucson, Arizona. As a buffer zone, the eleven-acre presidio housed many residents, including the auxiliary soldiers enlisted to protect and serve the surrounding areas. In 1817, Alvino Ocoboa, identified as a Yaqui soldier, resided in the presidio with his wife and children.<sup>4</sup> Other individuals and families at the presidio are likely to have been of Yaqui heritage. Inconsistent record-keeping mislabeled or omitted individuals and families' ethnic markers, and frequently people would hide their indigenous heritage in exchange for higher social status.<sup>5</sup> The Ocoboa family in early 1800s Tucson Presidio connect to other Yaquis families with the same last name in the Tumacacori area recorded during the 1790s to the early 1800s.<sup>6</sup> Yaquis continued to trek northward to areas already recognized in oral traditional knowledge. Tucson was no exception. The Tucson Presidio was a multicultural hub where Yaqui, O'odham, Spanish, Mexican, and other groups resided and moved throughout following the Santa Cruz River.

During the period of Mexican control of Southern Arizona and during the first decades of United States governance, the documentary record of Yaqui people in Arizona becomes more difficult to locate. As Anselmo Valencia Tori noted, "The Yaquis were a strong fierce People who were being warred upon and persecuted for no reason. It was the strategy of the Yaqui People to disguise their heritage to avoid further persecution by these invading forces."<sup>7</sup> But there remains evidence of the Yaqui people continuing to live in and around Arizona.

One example comes from Tucson's Court Street Cemetery. During the excavation to construct the Justice Court Complex in downtown Tucson, the SRI's Archaeological Data Recovery Project discovered a nineteenth century site that included human remains from O'odham, Yaqui, and other groups. The remains date between 1860-1890.<sup>8</sup> The tribal communities were contacted to coordinate a repatriation for the remains to be reburied in 2010. The census information and the discovery of Yaqui burials in 2006 provide additional confirmation that Yaquis have

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<sup>4</sup> Officer, James E. 2015 *Hispanic Arizona, 1536-1856*. University of Arizona Press, Tucson, AZ.

<sup>5</sup> Jackson 1995; McCaa 1984; Miranda 1988.

<sup>6</sup> *Id.*

<sup>7</sup> Historic displacement, widespread injustices, and the dispossession of land, territories, and resources are key elements in recent Yaqui history. For example, between 1882 and 1911, the Mexican Government under Porfirio Diaz enacted a policy of Yaqui extermination, military occupation, genocide, and slavery on plantations in the Yucatan and Oaxaca. Thousands of Yaquis were sold into slavery and thousands more died during the military campaign, displacing and compelling other Yaquis to migrate. Up until, 1918 in the United States, and 1929 in Mexico, our ancestors never hesitated to defend or give their lives for the protection of the Yaqui way of life. January 9, 1918 was the last time the United States Army and Native Americans engaged in combat at the Battle of Bear Valley, an engagement fought between a band of Yaquis and a detachment of United States Army soldiers of the American 10th Cavalry Regiment (Buffalo Soldiers), near Arivaca, Arizona. It was the final official battle of the American Indian Wars. However, the Yaqui were still engaged in defense of their people in war with Mexico, in the last major engagements of the Yaqui-Mexican Wars.

<sup>8</sup> Hall, John D., O'Mack, Scott, Heilen, Michael P., Swope, Karen, Hefner, Joseph T., Sewell, Kristin, and Gray, Marlesa, 2010 *End of Fieldwork Report for the Joint Courts Complex Archaeological Data Recovery Project*. Strategic Research Inc.

continuously inhabited the Tucson area for centuries with histories of an interconnected landscape, kinship, and social networks. The Tucson Presidio site and the Justice Court Complex are both less than 2 miles from the Barrio Anita area, which was an early recognized Yaqui barrio,<sup>9</sup> and 3.4 miles from the properties proposed for transfer to trust status.

In the late nineteenth and early twentieth century, numerous Yaqui communities were documented within the vicinity of what is now called “Old Pascua” or “Pascua Village.” The village of Bwiia Bwalko (translating in the Yaqui language to “soft earth”) or Tierra Floja (translating in the Spanish language to “loose earth”), was located along the I-10 and Miracle Mile, east of the Santa Cruz River, in approximately the same location where the present University of Arizona West Campus Agricultural Center property is located. Yaquis from surrounding areas gathered at Old Pascua to hold Lenten ceremonies, much as they do today. These ceremonies include specific processions throughout Old Pascua that arrive and depart the grounds of the 1.7-acre Old Pascua Cultural Plaza which would be transferred to the United States under the current bill. The Cultural Plaza is owned by the Tribe and listed on the National Register of Historic Places as a traditional cultural property (TCP). Because of the importance of Old Pascua to our people, in 1921, the joint efforts of Yaqui leaders, local politicians and others secured the initial 40-acre parcel that formalized Pascua Village and within two years, Tamar Richey helped progress the establishment of Richey Elementary School in Pascua Village.

While the community of Old Pascua is not held in trust by the United States, it is recognized by the BIA as “near-reservation” lands under 25 C.F.R. Part 20, for purposes of extending BIA financial assistance and/or social services.<sup>10</sup> Over the years, the Tribe has purchased commercial properties and Tribal residences within or adjacent to Old Pascua to support our Tribal members and tribal self-determination goals. In addition to the 1.7-acre Old Pascua Church and Cultural Plaza, as of this writing, the Tribe owns approximately 30 acres of commercial property for Tribal economic development purposes in or around Old Pascua that would be transferred into trust under the current bill.<sup>11</sup> Overall, there are over 500 residences, tribal and non-tribal, in Old Pascua. The Tribe own approximately 43 Tribal residences in fee in the Old Pascua community.

In 1960, Yaquis in Old Pascua initiated a request for land primarily to protect their culture and seek a permanent home. In 1963, the Pascua Yaqui Association was formed. In 1964, the U.S. Government deeded 202.76 acres to the Pascua Yaqui Association. In 1975, the Pascua Yaqui Association sought federal recognition from Congress, and on September 18, 1978, the Pascua Yaqui Tribe was officially recognized by Congress.<sup>12</sup> It is of great importance to note that we have landless non-Reservation communities throughout Southern Arizona, California, and even Texas. The largest concentrated population of Yaqui people on the U.S. side of the border live

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<sup>9</sup> Warnock, John 2016 “Tucson: A Place –Making,” *Journal of the Southwest*, Vol 58, No. 3, pp. 361-616.

<sup>10</sup> See 48 Fed. Reg. 40442, September 7, 1983.

<sup>11</sup> See Attached Exhibit A.

<sup>12</sup> 25 U.S.C. §1300f-2.

on the Pascua Yaqui Reservation and in our several Tribally Recognized Communities,<sup>13</sup> both in and around the greater Tucson/Pima County region and in the Maricopa/Pinal County regions.

Members of the Tribe have lived in these Tribally Recognized Communities since before the Tribe was Federally Recognized in 1978, but these communities were not made a part of the Tribe's reservation. At the time of recognition, a small parcel of land was made reservation, and Congress later acknowledged that a study was needed to determine whether the Tribe would need more land.<sup>14</sup>

## **II. Reasons for Congress to Authorize the Taking of this Land into Trust.**

As described below, the land at issue has been the subject of detailed agreements with both the State of Arizona, in the form of a federally approved compact, and the City of Tucson, in the form of an inter-governmental agreement. Further, the location is one of historic and cultural importance to the Pascua Yaqui and its acquisition would be consistent with past Congressional actions recognizing the need of the Pascua Yaqui for additional lands given the Tribe's relatively small reservation.

### **(A) The Pascua Yaqui Tribe has worked with the State of Arizona, City of Tucson, and tribal governments, and executed agreements supporting the placement of this land into trust.**

#### **1) Placing this land into trust would be in accordance with our 2021 Amended Gaming Compact.**

The Pascua Yaqui Tribe recently finalized negotiations and approved amendments to its gaming compact with the State of Arizona. A 2021 Amended and Restated Gaming Compact was approved by the Department of Interior on May 24, 2021 (the Compact). Of utmost importance to the Tribe, the Compact has a provision which allows the Tribe to develop a gaming facility in the community of Old Pascua if H.R. 4881 becomes law.

After nearly 5 years of negotiation, the statewide Arizona Compact was finalized to include provisions that ensure strict limitations on the location of gaming facilities, number of gaming facilities, numbers of gaming devices, and the types and numbers of games allowable for each tribe. The Compact gives each tribe the opportunity to improve its economic circumstances.

The Compact achieves a balance for all parties and creates a positive and predictable business environment for every tribe. In addition to creating a competitive balance among gaming tribes, the compact also creates a new revenue stream for non-gaming tribes through a Compact Trust Fund, and continued the machine rights transfer mechanism, through which gaming tribes in

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<sup>13</sup> "Tribally Recognized Communities" represent "specifically delineated geographic areas where our Tribal members have historically congregated and where they have a continuing presence today. These Tribally Recognized Communities, including Old Pascua, are formally recognized by the Tribe for purposes of Tribal enrollment and Tribal services. See, e.g., *Resolution of the Pascua Yaqui Tribe Approving Extension of Boundaries for Recognized Yaqui Communities for Purposes of Enrollment Demographics and for Defining Community Boundaries and Service Areas*, Resolution No. C03-38-08. In addition, the Tribally Recognized Communities of Old Pascua is recognized by the Bureau of Indian Affairs (BIA) as "near-reservation" lands under 25 C.F.R., Part 20, for purposes of extending BIA financial assistance and/or social services. See 48 Fed. Reg. 40442, September 7, 1983.

<sup>14</sup> P.L. 103-357 (October 14, 1994).

large markets can put more gaming devices into play by purchasing the rights to operate those devices from tribes located in small or non-existent gaming markets. The Compact also provides for tribal revenue-sharing with the State and local governments in exchange for enhanced tribal exclusivity for casino gaming.

Our amended Compact authorizes our Tribe to seek to place this land into trust for the purpose of gaming. It contains a specific and limited area in the 2021 Amended Compact itself. This particular area of land is located within and adjacent to the Old Pascua Community and is called the “Compact Designated Area” on the map submitted with this testimony.

It is important to note that Governor Doug Ducey of Arizona supports this legislation (HR 4881).<sup>15</sup> It is equally important to note that the Arizona legislature overwhelmingly approved on a bipartisan basis, Arizona’s 2021 Gaming Act, (HB 2772) which was a companion to our Amended 2021 Compact with the State. We are also proud that other Arizona tribes agreed to this legislation and have given letters of support to the Pascua Yaqui Tribe.<sup>16</sup>

The 2021 Amended Compact represents the will of the State of Arizona and Arizona Tribes. The Compact also has the support of the Department of Interior through rigorous review of tribal gaming compacts required under the Indian Gaming Regulatory Act.<sup>17</sup>

**(2) Our Tribe and the City of Tucson have executed an intergovernmental agreement that addresses this land being placed into trust for gaming purposes.**

The City of Tucson also supports this legislation.<sup>18</sup> This is evidenced by both an intergovernmental agreement (“IGA”) between our two governments and a recent letter of support submitted by Mayor Regina Romero on behalf of the City.<sup>19</sup> After years of negotiations, the IGA was signed at the end of 2019, and amended this year. The economic benefits to the Tribe and the City of Tucson if the bill is enacted will be very significant. It will benefit its members by increasing tribal revenue for tribal government services, enable the Tribe to build new tribal housing, and creating new jobs for tribal members and the city/county during both the construction and operation phases of the proposed project.

The Project will increase economic output and employment in the City of Tucson, and in Pima County. It will result in direct economic output from construction spending and annual operating revenue from the casino and retail space.

Construction is estimated to create hundreds of direct jobs and generate millions of dollars in construction payroll. The project’s operation will create approximately 500 total direct jobs. It also will generate approximately \$17,000,000 in direct wages in the City/County, and annual spending in the range of \$12,000,000 to \$12,500,000 in vendor spending in the City/County.

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<sup>15</sup> See Attached Exhibit B.

<sup>16</sup> See Attached Exhibit C.

<sup>17</sup> See Attached Exhibit D.

<sup>18</sup> See Attached Exhibit E.

<sup>19</sup> See Attached Exhibit F.

Another net positive economic impact will be an increase in wages in the region, an increase in tax revenues to the state and local governments, and additional revenues to City of Tucson through our IGA. The new property will pay annual taxes of approximately \$8,300,000 including gaming distributions to the State, payroll taxes, and sales taxes.

In addition, the IGA covers a multitude of issues that come with placing land into trust within a municipality: taxes, jurisdiction, municipal services like trash, water, and electricity. The City's tax base will not be eroded as the Tribe has agreed to make payments to the city in lieu of taxes. The Tribe has also agreed to provide funding to mitigate the costs associated with the development. Our governments have also pledged to work closely on dealing with any criminal jurisdictional issues. The City's leadership has recognized the economic benefits and value of a gaming facility near Old Pascua and has thrown their full support behind our efforts to put this land into trust.

**(B) Congress has already recognized the PYT's need for more land.**

Land is sacred to the Pascua Yaqui Tribe. Land is what ensures continuity because it is not only where our ancestors once lived, but also where future generations will be born; it constitutes a fundamental component of life. Land is also a means to preserve our cultural identity separate and apart from mainstream society. In addition to its spiritual and cultural significance, tribal land plays an important practical role. Many tribal nations rely on their land for their livelihood, which may be based on hunting, fishing, or agriculture. Unfortunately, our tribe does not have a large land base that is rich in natural resources and so we have had to use it as efficiently as possible to provide for our members. Our land base helps us exercise tribal self-governance and self-determination. As a government, we've created our own tax structures, passed laws to provide for public safety, regulate business and industry, and perform other functions identical to those typically provided by a combination of the state, county, city, or town.

Given the location of our reservation and the size of our membership, we are in dire need of additional land. Congress transferred 202 acres of land southwest of Tucson to the Pascua Yaqui Association in 1964.<sup>20</sup> The Reservation was formally established in 1978 and the members of Pascua Yaqui Association were federally recognized as the Pascua Yaqui Tribe. In 1982, with the enactment of H.R. 4364, the Reservation was expanded by 690 acres with the intent of improving the socio-economic environment of tribal members.<sup>21</sup> In 2014, H.R. 507 was enacted which placed two 10-acre parcels into trust for the Tribe.<sup>22</sup> Pursuant to H.R. 1404, the Tribe acquired 40 acres of land for flood control development in 2019. In addition, the Tribe has purchased land in fee and has placed land into trust via the administrative process that is delineated in 25 C.F.R. 151.

We started with 202 acres and 500 tribal members when we became federally recognized in 1978. Thankfully, our reservation has slowly grown to 2,216 acres and we now have approximately 22,000 members enrolled with our tribe. This expected growth means that our government has to respond to a corresponding need for land and services. As discussed below,

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<sup>20</sup> Private Law 88-350, 78 Stat. 1196.

<sup>21</sup> Public Law 97-386; S. Rpt. 97-657.

<sup>22</sup> Public Law 113-134, the Pascua Yaqui Tribe Trust Act.

our current reservation simply is not large enough to accommodate for our growing population or the land needs for ancillary government and economic development required for a healthy community. Additionally, the reservation is now approaching a point where expansion will no longer be possible.

Recognizing this situation, Congress directed the Secretary of the Interior to conduct a land study for the Tribe in 1994.<sup>23</sup> The Secretary of Interior was instructed to conduct a study to determine (1) whether the lands held in trust on October 14, 1994, by the United States for the Pascua Yaqui Tribe were adequate for the needs of the Tribe for the foreseeable future; and (2) if such lands were not adequate – (A) whether suitable additional lands are available for acquisition by exchange or purchase; and (B) the cost and location of the suitable additional lands. As part of this study, the Secretary was directed to “provide for the participation of members of the Pascua Yaqui Tribe” in the study.

**(1) *The Tribe conducted a land study in 2013 which concluded that the Tribe is in need of more land—a follow-up study in 2021 confirms these findings.***

In accordance with the 1994 law, the Tribe received funding from the Bureau of Indian Affairs to conduct a land study in 2013. In it, the study concluded that the current land base is entirely insufficient for the Tribe and its members. The Tribe currently has 2,216 acres of Reservation land. The reservation lies in and around the Black Wash, a 100-year Federal Emergency Management Agency designated floodplain, with numerous culverts and drainage ditches crossing the community.

The reservation was placed in a remote location in 1978. The Reservation has no access to local surface water, and groundwater pumping is impracticable. Just below the earth’s surface, is a thick layer of bedrock. Since 1978, the City of Tucson and surrounding communities have expanded, and the increase in the number of homes and businesses has essentially land locked the Tribe. The current reservation land use is almost at capacity. The Tribe has primarily used its land for housing purposes. There are also various governmental buildings and two gaming properties on the reservation. Due to the encroachment of the city, and the existing uses on the reservation, the Tribe will have difficulty expanding its existing reservation land base.

The land study, assessed the Tribe’s population needs and growth patterns to determine the need for additional land to provide the necessary land base for the Pascua Yaqui Tribe in the foreseeable future and to manage growth in an efficient and sustainable manner. The land study also includes Pascua Yaqui tribally recognized communities in the Greater Tucson/Pima County and Maricopa/Pinal County regions. Some of these tribally recognized communities include

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<sup>23</sup> P.L. 103-357 (October 14, 1994), which amended P.L. 95-375 (September 18, 1978), as codified at 25 U.S.C. §1300f-3. The study amendment was submitted by Senator John McCain to address issues raised about the Tribe’s limited land holdings during the time Congress was considering amended legislation in 1994. Congress understood that the Tribe would need additional lands, but that such lands could not be identified without further study. For this reason, the Tribe’s newly acquired lands adjacent to their traditional territory should be placed in trust, especially since the State and Interior have approved the use of this land for gaming in the gaming compact and where the acquisition of this land addresses wrongs that arose in how the Tribe was treated by Interior between 1978 and 1994, with regard to land acquisitions, funding, and services.

lands held in fee by the Tribe. None of these tribally recognized communities include Reservation lands. Yaqui communities in the Greater Tucson/Pima County region include the Tribe's Reservation, which is known as Pascua Pueblo, as well as Pascua Yaqui tribally recognized communities including: Yoem Pueblo (Marana); Old Pascua; and Barrio Libre/16th & 44<sup>th</sup> (South Tucson). The Tribe's Tortuga Ranch is also included in this region. Pascua Yaqui tribally recognized communities in the Maricopa County and Pinal County regions include communities in Guadalupe, Penjamo (Scottsdale), High Town, Eloy and Coolidge.

The existing land base of the Tribe has been determined to be inadequate for the establishment of a diverse economic base and basic housing needs. The acquisition of additional land is necessary to facilitate self-determination, economic development and housing. The Tribe anticipates continuing advancement through infrastructure development, including, but not limited, to the following: housing, education, employment, government administration, economic development, recreation, open space, medical, and health.

Combining both residential and nonresidential land uses, approximately 18,168.4 additional acres will be needed to house the projected population and all the functions needed to economically sustain the Pascua Yaqui Tribe.<sup>24</sup> A total of 4,355 acres of residential land will be needed in 2115 to house the Pascua Yaqui Tribe population. Assuming the ratio of residential (21 percent) and nonresidential (79 percent) land uses remains constant throughout the planning horizon 2015 to 2115, approximately 14,353 additional acres of nonresidential land will be needed to support all nonresidential land uses.

The projected housing needs for the Pascua Yaqui Tribe for 2115 is 17,299 housing units. Based on the traditional settlement pattern of the Yaqui people at a density of four homes per acre, or an average lot size of 0.25 acres, a total of 4,355 residential acres will be needed by 2115 to provide housing for the projected population.

The small amount of Reservation land acreage available for development (791.4 acres) is not enough land to include the current and projected Tribe's housing needs. As previously mentioned, there are currently 675 people on the current housing waiting list. If acreage available for development is dedicated to housing only, the economic viability of the Tribe will be seriously compromised. A healthy balance of residential and non-residential land uses is needed to support the projected population in a sustainable manner. All the uses mentioned above require additional lands.

The majority of Pascua Yaqui tribal members reside outside the exterior boundaries of the reservation but within the seven tribally recognized communities in Arizona. As such, the trust lands are inadequate and insufficient for its members. The reservation lands established for the Tribe in 1978<sup>25</sup> and subsequent years are located in a floodplain area. This complicates and increases the cost of land development. Further, the Tribe is significantly land-locked with very limited opportunities to acquire land adjacent to or in close proximity to the Reservation. These

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<sup>24</sup> 2013 Pascua Yaqui Land Study.

<sup>25</sup> Act of Oct. 8, 1964, Private Law 88-350, 78 Stat. 1196.

unique circumstances and the comprehensive long-range development plans for creation of a diverse and self-sustaining Tribal community support this request.

The Tribe administers its programs and services from the reservation but provides services to all of its recognized communities. This situation has presented many difficulties. For example, some members may have to travel hundreds of miles to reach the closest tribal government office or health facility. A thriving, self-sufficient, healthy and sustainable community involves much more than having the acreage needed to support its future residential land use needs. It also requires acreage to fulfill its government and administrative functions, economic development functions (commerce, employment, industry, tourism, technology and innovation), for community services (education, libraries, police and fire protection, emergency management), cultural, health services, infrastructure (roads, water, sewer, drainage, waste, utilities), and amenities such as parks, recreation, trails and open space land needs. The Pascua Yaqui Tribe is no exception and has diligently been working in that direction since its recognition.

**(C) Old Pascua is a logical place for more land to be placed into trust on behalf of the Pascua Yaqui Tribe.**

***(1) A brief history of Old Pascua***

The Pascua Yaqui Tribe considers this bill a restoration of a portion of our homeland. To be perfectly clear, Old Pascua is one of our recognized ancestral communities. Tribal members have resided there for countless generations. Many tribal members were relocated from Old Pascua to New Pascua in 1964. New Pascua has become the official tribal headquarters. Nevertheless, tribal members continue to reside in the Old Pascua community. Since the relocation, the Tribe has continued to provide various services to tribal members in Old Pascua. It is important to note that Old Pascua was given a “Near-Reservation Designation” by the Department of Interior on August 3, 1983. This allows the Tribe to provide financial assistance and/or social services via BIA funding to the community. The Tribe has also purchased residential and commercial land in the community. Presently, 500 members of our Tribe reside in Old Pascua.

Old Pascua is one of the longest continually inhabited Yaqui villages of what is now Southern Arizona. Non-Yaquis took notice of the village in the early 1900s. In 1920, a Tucson developer, A.M. Franklin, donated 40 acres for the stated purpose of establishing a “Yaqui Nation” in Arizona.<sup>26</sup> Since 1921, the Old Pascua Cultural Plaza and church has served as the oldest formally established Yaqui community in Tucson. The plaza consists of a 1.7-acre lot, with a chapel, the Capilla San Ignacio de Loyola.<sup>27</sup> The Plaza has served as a Yaqui cultural center and the site of our community activities and ceremonies.<sup>28</sup>

Old Pascua Village was annexed into the City of Tucson, Arizona in 1952. Beginning in the 1960s, Yaquis in Old Pascua initiated requests for additional land, primarily to protect our culture from outside groups. Many challenges existed to our ability to maintain our cultural and traditional practices with the City of Tucson growing around us. Challenges included regulation,

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<sup>26</sup> Tucson Citizen 1971

<sup>27</sup> Chapel of St. Ignatius of Loyola.

<sup>28</sup> See Exhibit G.

taxation, access and ownership of our sacred, cultural, traditional, and religious grounds, and limited access to sites of symbolic importance, such as the Santa Cruz River<sup>29</sup> for gathering ceremonial materials.<sup>30</sup> Encroachment created obstacles to maintaining cultural and linguistic ties to our families and culturally connected relatives. Other problems included the protection of cultural items and traditional cultural regalia, such as ceremonial gourds and rattles because of the lack of cultural understanding and protective laws.

To address these challenges, the tribe formed the Pascua Yaqui Association (PYA) in 1963. As mentioned above, Congressman Morris K. Udall (D-AZ) introduced a bill to transfer 202 acres of desert land southwest of Tucson to our Yaqui elders in 1964.<sup>31</sup> The bill was later signed into law and the deed to the land was transferred to the PYA. In 1967, the first families moved into “New Pascua.” Some tribal members relocated to land set aside for them in rural Pima County by the United States that would become our Tribe’s future and current reservation, while others refused to leave their ancestral homelands of Old Pascua.

## *(2) The Cultural Significance of Old Pascua*

It is nearly impossible to describe in full our Tribe’s relationship to Old Pascua. I suppose I should begin with explaining what Pascua means. For those who do not speak Spanish, Pascua means Easter. Our Tribe conducts sacred rituals during Lent that have been witnessed by thousands and that have been documented by historians and scholars. The people who observed these ceremonies associated our tribe with Easter and began to refer to our community as Pascua.

Hundreds, if not thousands, of our tribal members have literally poured their blood, sweat, and tears onto the land of Old Pascua for the purpose of fulfilling their cultural duties. Our cultural plaza is a source of hope. It is a center for our members to come together and perform rituals that have been passed down for hundreds of years. Our devotion to these traditions is unquestionable and is a source of great pride for our tribe. Beyond the four corners of our plaza, we carry on processions in accordance with our beliefs and these processions occur throughout the rest of Old Pascua. For these reasons, the land is and will remain sacred to us.

As stated above, the plaza has been the focus of Yaqui traditional religious, cultural, and social events. The dances, processions, and other ceremonial activities that occur there are a critical part of Yaqui life and tradition. These rituals keep Yaqui heritage alive; they serve to teach young tribal members of their unique past and their traditional way of life. In addition, they enrich the lives of all who view the ceremonies and in so doing learn about the Yaqui culture.

For the Tribe, the practice of religion, the furtherance of social lifeways, and the education of the young in cultural traditions are intertwined, and it is within the plaza that the majority of the activities occur that promote these components of our culture. The paramount function of the

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<sup>29</sup> The Santa Cruz River used to run perennially and supported Cottonwood, Willow forests, and Mesquite bosques. It provided food security, and health. The Santa Cruz River allowed for indigenous subsistence farming, the collection of edible plant materials and medicines, and helped fulfill dietary requirements, ensuring food security, good health, and environmental diversity.

<sup>30</sup> Cottonwood, Carizzo (bamboo), flowers, Mesquite, willow, palm, cocoons (E. Calleta R. Sincta moth).

<sup>31</sup> “New Pascua,” H.R. 6233: Public Law 88-350, 78 Stat. 1196, (Morris K. Udall (D-AZ)).

plaza is as a religious/ceremonial location. The ceremonies that take place on the plaza are both pre-Christian and Christian in origin and are conducted to honor or bless events and/or persons, who may be Yaqui or non-Yaqui.



### **Cultural and Ceremonial Overview**

Yaqui culture plays an integral role in the sustainment of our people, our development, our communities, and our tribal governance. The Christian ceremonies stem from the teachings of the Jesuit Andres Perez de Ribas who entered Yaqui country in what is now southern Sonora in 1618. He and the missionaries who followed him taught Christianity by dramatizing events, including those of the Easter season. Over time these Christian dramatizations were combined with ancient traditions that centered on the connection of the Yaqui to the plant and animal world and to the spirit of the Earth. In that world man could communicate with animals, and special powers were inherent in the forest, in animals, and in dreams.

Ceremonial fiestas occur throughout the year but the most complex event, which is generally referred to as the Easter Ceremony, is initiated on Ash Wednesday and continues through Easter Sunday. The Easter Ceremony, which in essence is an extraordinarily complicated pantomime of the death and resurrection of Jesus, includes both pre-Christian and Christian themes melded together in a way that is uniquely Yaqui. For example, two types of dancers, the Deer Dancers and the Pascolas (literally “old men of the fiesta”) exemplify the pre-Christian traditions while others, such as Caballeros and Fariseos, represent Christian components of the Easter pageant. It is this ceremony by which the Yaqui are best defined to the non-Yaqui world that surrounds them, and it is within the plaza that most Easter Ceremony events occur, as well as those of the other ceremonial fiestas.

Although the plaza may appear as an undistinguished dirt lot to the uninitiated observer, to the Yaqui it is a location of paramount importance, containing objects and areas of special significance. Thus, the plaza is both culturally significant and sacred ground in an all-encompassing sense. It is the location at the heart of Yaqui life in Old Pascua Village where events occur that are integral components of centuries-old Yaqui cultural traditions.

***(3) The Tribe has continuously provided support to its tribal members living in Old Pascua***

The Tribe operates and maintains community centers in Old Pascua that provide medical, social, and recreational services. Throughout time, the Tribe has purchased both residential and commercial lots in and adjacent to Old Pascua. The Tribe established a museum within the neighborhood that highlights tribal history and contains precious artifacts. The tribe has developed a strong partnership with the City of Tucson regarding this community and even took the extraordinary step to enter into an intergovernmental agreement (“IGA”) that outlines current and future responsibilities that address the needs of the area.

Unfortunately, Old Pascua faces several economic and social challenges. Unemployment, poor health, and inner-city violence is a reality our tribal members must deal with on a daily basis. In response to these difficulties, the Tribe has established a meal program for our elders, an afterschool recreational program for our children, and behavioral health services at our community center. The Tribe plans to develop job training programs, a GED program and even more programs aimed at improving the lives of our youth.

Housing has remained a central concern for the tribal members living in Old Pascua. As such, the Tribe does provide maintenance services to homes owned by tribal members. Many homes are in need of repair and rehabilitation. The Tribe continues to spend funds for this purpose, with particular attention to homes where elders reside. Recently, the tribe installed air conditioning units in homes to help improve the quality of life for its tribal members.

Through this legislation, the Tribe aims to restore a portion of our original ancestral land. Although we already own some of it in fee, placing the parcels into trust will allow us to have more direction and control over the land. Old Pascua is sacred to the tribe and will continue to be treated as such. With great pride and sense of purpose, our rituals will continue to be performed there. Without question, the goal of the Pascua Yaqui Tribe is to help support and serve the Pascua Yaqui people. The Tribe will continue to protect this land and preserve it as a place for tribal ceremonies.

***(D) The Department of Interior is Authorized to Take Land into Trust on Behalf of the Pascua Yaqui Tribe.***

The Pascua Yaqui Tribe was recognized by Congress in 1978, through Public Law 95-375.<sup>32</sup> However, at the time, the Bureau of Indian Affairs, established a distinction among tribes asserting that some tribes were historical and possess all sovereign rights, and some tribes were

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<sup>32</sup> P.L. 103-357 (October 14, 1994), which amended P.L. 95-375 (92 Stat. 712) (September 18, 1978), codified at 25 U.S.C. §1300f-3, and the Indian Reorganization Act of 1934 (48 Stat. 984) (IRA).

created, with certain limitations on their sovereign rights. This issue arose for us when our Tribe submitted amendments to our tribal constitution under the IRA, and the B.I.A., while reviewing the amendments, determined that the Pascua Yaqui Tribe was not a historic tribe, but was a “created” tribe.<sup>33</sup> The B.I.A., labeled the Tribe created, and between 1978 and 1994, denied the Pascua Yaqui people the full benefits of sovereignty. The Tribe suffered years of injustice and unequal treatment by the administrative decision to diminish our sovereign authority, including impeding our authority concerning land, property, taxation, and law and order. Our Tribal leaders at the time sought legislative assistance in 1993 from Congress to right the wrongs we were experiencing. Congress soundly rejected the Department of Interior’s opinion that our Tribe was a “created” tribe, and enacted P.L. 103-357 to clarify that we were indeed a historic tribe, that possessed all the attributes of inherent tribal sovereignty.<sup>34</sup>

The 1994 Amendment to our federal Recognition statute clarified the Pascua Yaqui Tribe’s status as a historic Indian tribe to end years of unfairness to which the Pascua Yaqui people had been subjected, and acknowledged the tribe was a “federally recognized Indian tribe possessing all the attributes of inherent sovereignty which have not been specifically taken away by Acts of Congress and which are not inconsistent with such tribal status.”<sup>35</sup> Moreover, an amendment submitted by Senator McCain, codified Section 4, titled, “Study.” As mentioned above, Section 4 mandated that the Secretary of the Interior conduct a study to determine “whether the lands held in trust for the Pascua Yaqui Tribe are adequate for the needs of the tribe for the foreseeable future and if such lands are not adequate, whether suitable additional lands are available for acquisition by exchange or purchase.”<sup>36</sup> In 1994, the Secretary of the Interior, no later than 2 years after the date on which funds were made available for the study, was directed to submit a report to Congress that contained the results of such a study. Funding was authorized to be appropriated as necessary to carry out the provision of this law.<sup>37</sup> Therefore, not only was the Secretary authorized to take land into trust for the Pascua Yaqui Tribe in 1978 through Public Law 95-375, in 1994, the Secretary of the Interior was given additional authority pursuant to Public Law 103-357, to take lands into trust and to conduct a Land Study for the benefit of our Tribe.<sup>38</sup> As explained, the Tribe did not receive funding to obtain a Land Study until 2013, and to date, a Congressional report has not been submitted to Congress by the Department of Interior.

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<sup>33</sup> See page 12 of the April 30, 1993 Hearing Record of the House Subcommittee on Native American Affairs on H.R. 734, to amend the act entitled “An Act to Provide for the Extension of Certain Federal Benefits, Services, and Assistance to the Pascua Yaqui Indians of Arizona, and for Other Purposes” -Written statement of Carol A. Bacon, Director, Office of Tribal Services, Bureau of Indian Affairs.

<sup>34</sup> 25 U.S.C. §1300(f)(a).

<sup>35</sup> 25 U.S.C. §1300f-1(a); “The Pascua Yaqui Tribe is a federally recognized sovereign entity that has existed as a formal tribal government since time immemorial and yet an arbitrary classification by the Bureau of Indian Affairs would seek to limit their sovereign authority. By reaffirming the Pascua Yaqui Tribe’s status as a historic tribe, H.R. 734 would dispel the misconception perpetuated by the BIA that the Pascua Yaqui Tribe has limited powers of self-government delegated by the Federal Government. The notion of delegated authority is inconsistent with settled principles of basic Indian law; namely that federally recognized tribes retain any inherent sovereign authority which has not specifically been divested by Federal law. There is no legal support for the BIA’s created versus historic tribe distinction and the distinction must not be tolerated. The Pascua Yaqui Tribe is either sovereign or not sovereign; there is no middle ground.” Congresswoman Karan English (D-AZ) (House of Representatives - August 2, 1993).

<sup>36</sup> 25 U.S.C. § 1300f-4(a).

<sup>37</sup> 25 U.S.C. § 1300f-4(c)(d).

<sup>38</sup> Status of Pascua Yaqui Indian People, P. L. No. 103-357, Oct. 14, 1994, 108 Stat. 3418, 25 U.S.C. §§ 1300f-1300f-3.

The acquisition of additional land is necessary to facilitate self-determination, economic development, and to support the housing needs of the Tribe.

Primarily because of our historic struggles with the B.I.A., Congress also saw fit in 1994 to amend Section 16 of the Indian Reorganization Act<sup>39</sup> to add subsections (f) and (g) to the Act.<sup>40</sup> Subsection (f) prohibits the Secretary of the Interior from creating any regulation which “classifies, enhances, or diminishes the privileges and immunities available to the Indian tribe relative to other federally recognized tribes by virtue of their status as Indian tribes.”<sup>41</sup> Subsection (g) provides that “[a]ny regulation, administrative decision, or determination of a Department or agency of the United States that classifies, enhances, or diminishes the privileges and immunities” of an Indian tribe relative to the privileges and immunities of other federally recognized Indian tribes shall have no force or effect.<sup>42</sup> These provisions were added as a Senate floor amendment to S. 1654, the Technical Corrections Act of 1993, which became Public Law 103-263.<sup>43</sup>

### **(E) The Department of Interior Supports H.R. 4881.**

In written testimony presented on October 5, 2021, Bureau of Indian Affairs Director, Darryl LaCounte, on behalf of the Department of Interior, testified that the “Department of the Interior supports H.R. 4881. This bill provides greater opportunity for the Pascua Yaqui Tribe to make investments in the tribal economy, promotes community and regional economic development within the greater Tucson region, and is in keeping with the Biden Administration’s commitment to support tribal self-determination – including economic self-determination.”<sup>44</sup>

### **III. Conclusion**

In short, we are asking Congress to approve what we consider a promise, akin to a treaty, among the State, the City, and our neighboring tribes regarding this issue. It would be the final step in what has been a decade long process. We have taken great care to reach out to and establish partnerships with our regional governmental counterparts. As set out above, our transparent dreams have wide support throughout Arizona, and our Congressional delegation.<sup>45</sup> The plan involves a massive investment on our part, calling for tens of millions of dollars that will help

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<sup>39</sup> 25 U.S.C. § 461 et seq.

<sup>40</sup> 25 U.S.C. § 476 (f) &(g), Public Law 103-263.

<sup>41</sup> 25 U.S.C. § 476(f).

<sup>42</sup> 25 U.S.C. § 476(g); “The Congress has never acknowledged distinctions in or classifications on inherent sovereignty possessed by federally recognized Indian tribes. Tribal sovereignty must be preserved and protected by the executive branch and not limited or divided into levels which are measured by the Bureau of Indian Affairs and the Department of the Interior. We must not revisit the darkest period of Federal Indian policy by allowing the termination of tribal sovereign authority through the implementation of the Bureau of Indian Affairs policy distinction between historic and created Indian tribes.” Statement of Congressman Richardson on the consideration of S. 1654, Cong. Rec. H3803, May 23, 1994.

<sup>43</sup> “The recognition of an Indian tribe by the Federal Government is just that--the recognition that there is a sovereign entity with governmental authority which predates the U.S. Constitution and with which the Federal Government has established formal relations...Regardless of the method by which recognition was extended, all Indian tribes enjoy the same relationship with the United States and exercise the same inherent authority.” -Statement of Senator John McCain on the consideration of S. 1654, 140 Cong. Rec. S6146, May 19, 1994.

<sup>44</sup> See Exhibit H.

<sup>45</sup> See Exhibit I.

create close to a thousand direct and indirect jobs for our Tribe and for the residents of the City of Tucson.

We are a fast growing tribe and our membership is increasing. We have more tribal members, children, and elders, who require services—services like housing, health and medical, social services, and education. We don't wish to be a burden because Yaquis are self-sufficient hard-working people. Our reservation has become land locked; we can't expand much further. Passing this law would be a restoration of part of our homeland, a place where many of our stories have taken place, where traditions have been passed down in songs and dances so that each generation can learn about its culture and traditions.

Thank you again for your consideration. On behalf of my nation, I want to share our gratitude to this Congress for upholding its trust responsibilities to us. I hope and pray our relationship continues to grow and remains prosperous.

As we say back home, Enchy mampo tawak, "it's in your hands." Lios aapo enchim "may God be with you."



1921 photo Old Pascua Tribal Ceremonies.