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BACKLOGS AT THE DEPARTMENT OF THE INTERIOR: LAND INTO TRUST APPLICATIONS; ENVIRONMENTAL IMPACT STATEMENTS; PROBATE; APPRAISALS AND LEASE APPROVALS

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

OCTOBER 4, 2007

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THURSDAY, OCTOBER 4, 2007

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, D.C.

The Committee met, pursuant to notice, at 9:30 a.m. in room 628, Senate Dirksen Office Building, Hon. Byron L. Dorgan, Chairman of the Committee, presiding.

OPENING STATEMENT OF HON. BYRON L. DORGAN, U.S. SENATOR FROM NORTH DAKOTA

The CHAIRMAN. We will call the hearing to order. This is an oversight hearing of the Indian Affairs Committee of the United States Senate.

Today, the Committee is holding an oversight hearing to examine the status of tribal applications at the Department of the Interior. Those applications especially relate to the management and the development of Indian lands.

Since I became Chairman of this Committee, I have made it clear that my priorities would focus on Indian health care, housing and education, as well as economic development. Too many tribal communities, in my judgment, go without these basic services that many of us take for granted.

However, before we can effectively move on these issues, we must first help tribes secure and develop their own land base. Land holds a great spiritual and cultural significance to Indian tribes. The tribal land base is the necessary building block that enables tribal governments to provide housing, economic development, and essential government services to their citizens.

Although Indian tribes are governments, almost all activities that involve the development of Indian land have to be approved by the U.S. Department of the Interior. That includes placing land into trust for the benefit of the Indian tribe and approving leases for most economic or agricultural activities on Indian lands. Congress delegated the responsibility to approve these transactions to the Secretary of the Interior. Our intent was to protect and preserve the tribal land base. However, delays at the Department of the Interior in performing its duties have dramatically slowed the

growth and the development of tribal communities and their economies.

Let me provide some examples: the Gila River Indian community in Arizona. In February of this year I held a listening session on the Gila River Indian Reservation south of Phoenix, Arizona. During the session, the tribe showed me a state of the art office building—the picture is on that chart—a state of the art office building that it constructed on its trust land.

Apparently, after construction was complete on the building, the BIA decided it needed to approve a master lease before the tribe could sublet any of the space to tenants. The tribe has been trying to get this lease approved for more than a year. There is still no lease. So after investing $7.2 million to build a 71,000 square foot office building, the tribe has been unable to sublet any of that space for over a year and that building sits there empty.

I am confident that the BIA as trustee wants to help the tribes with economic development opportunities like this, but in this case it is not happening. So I am glad we have the opportunity today to hear from Mr. Artman and others to explain what has prevented that sort of thing from happening.

Another example is the Puyallup Tribe where the tribe acquired 12 acres of land in 1997 that it uses as a fish hatchery to preserve its prize steelhead trout. The tribe submitted an application to have the land placed in trust in 1997. Seven years later, in 2004, the BIA regional office told the tribe their application and a draft decision had been sent to the Assistant Secretary for approval. It is now October, 2007, a full decade later, and three years after the regional office said it had been sent to the Assistant Secretary for approval, and no decision has been made on the tribe's application.

On September 27, a notice was published in the Federal Register stating that the Secretary would be placing 750 acres of land into trust for the Shakopee Sioux community within the next 30 days. That is the Shakopee Sioux community in Minnesota. I am sure the tribe is grateful to have a decision, but they waited 11 years.

These delays I think have serious consequences and I want to show how after having to wait 10 years for a decision impacts the ability of tribes to provide essential services to their people. Photograph one that we have held up there shows what the tribal and surrounding land looked like in 1997. The land that the tribe was trying to have taken into trust is outlined in red.

In photograph two you will see the tribal and surrounding lands, and how they looked in 2005. Much development is occurring on the tribe's trust land and on non-Indian land. The only pockets of land without any development is the land that the tribe is seeking to have taken into trust. The tribe is hoping to use the land for housing or to build a community center.

These pictures show how the delays at the Department of Interior are impairing the ability of the tribes to develop their land, their economies and their future, and the delays are just not acceptable. I don't understand why the delays are occurring. I do know that there was a long period of time when the Assistant Secretary's position was open over at Interior. I got engaged. This committee was engaged in trying to get a new Assistant Secretary on board. We are pleased that Mr. Artman is there.

I want to be clear that these delays are not a new phenomenon at the Department of the Interior. They have existed for a long, long time. Indian Country has always expressed an overwhelming concern that the delays on many issues are becoming worse. We also hear concerns from both Indian and non-Indian communities about the lack of transparency with many of these processes. We understand that internal guidelines and policies, rather than published regulations very often govern the process.

So today, we will hear from Assistant Secretary Carl Artman about the current state of affairs at the Department and how these problems are being addressed. I plan to ask Assistant Secretary Artman to come back in six months and provide us with another status report on these same issues. At that time, we will decide as a Committee whether we need to find some way to intervene in some of these matters.

Let me thank all of you who have come to Washington today to participate and to testify.

Carl Artman is the Assistant Secretary for Indian Affairs at the Department of the Interior. Assistant Secretary Artman will explain the five processes and provide the Committee with a status report on the number of pending applications for each. We will then hear from five additional witnesses. I will introduce each of them separately when we ask them to testify.

Assistant Secretary Artman, why don't you proceed? Your entire statement will be made a part of the permanent record, and you may summarize.

STATEMENT OF CARL J. ARTMAN, ASSISTANT SECRETARY FOR INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

Mr. ARTMAN. Thank you, and good morning, Mr. Chairman and members of the Committee. It is a pleasure to be here to present the Department's statement on the pending land-into-trust applications, environmental impact statements, probates, appraisals and lease approvals.

With your permission granted, I will submit the full written testimony for the record and just make a brief opening statement.

This hearing was called to review the process surrounding and the potential backlog of pending applications or Bureau actions related to tribal and individual tribal member real property. We have some bright spots, areas in which we have tackled the questioned backlog with success, and we have some other areas that are, at best, can be called opportunities for great improvement.

Our bright spot is probates. I am pleased to note that we have cut our inventory in half over the last two years. Moreover, 98 percent of our backlog cases are ready for adjudication and distribution of the assets. We plan to clear the backlog by the end of 2008. In fact, by 2009, we plan to handle the probate cases with BIA staff and eliminate the need for outside contractors. This was accomplished without the internet, and if we are successful in getting back online, we expect that we can shorten the case preparation phases.

The BIA took a critical look at the historically high caseload of probate cases in late 2005. An average Indian probate case took an excessive amount of time to prepare, adjudicate and distribute.

Building on the reorganization and standardization of the probate program, the Bureau has reduced the probate caseload by one half over the last two years.

Combining the efforts of staff dedicated to probate, with a new comprehensive tracking system, the Department has improved case management and coordination of probate activities across three separate offices: the Bureau of Indian Affairs, the Office of Hearing Appeals, and the Office of the Special Trustee for American Indians.

Acquisition of land into trust is an area that needs a lot of work. You will probably ask me today how many outstanding applications we have for any particular area. The best that I can give you is an estimate, because we don't have an accurate tracking system for applications. This is an area besieged by a growing number of applications, decades of differing, if not contradictory, guidelines from within, and a culture of reluctance that is forged by lawsuits.

Our frontline employees in the region are frustrated by the growing stack of applications, and the tribes represented by the people to my left are frustrated by the lack of action and the impact that it has on the governmental needs, housing, health care, and economic development. Each category, on or off reservation, gaming or non-gaming, has its unique challenges.

This has been a front burner issue for me since before I came to the Department. As my tribe's Chief Counsel, I worked in coordination with the Midwest Regional Office to help develop new methods to expedite the land-into-trust applications. I understand first-hand the frustration felt by the tribes across the Country. As I told this Committee during the confirmation process, fixing the fee-to-trust issues was a priority for me.

We have been working on solutions for the on-reservation questions in recent months and this will soon bear results. We found that BIA real estate offices that are successful in managing their fee-to-trust workload have, to some degree, implemented corrective measures with the intent of moving cases forward. The most success can be found in varying levels in some regions do in part because they defined what a complete application is and will not accept an incomplete application. They follow stringent response time lines and have defined when a case becomes inactive, and implement a process for handling those cases.

Regional staff are looking for guidance and leadership on this issue. They will receive it, and in turn I am confident that they will produce the results that we are looking for.

I look forward to answering your questions regarding these two issues, as well as any on commercial leasing, appraisals, environmental submissions or other issues.

Thank you.

[The prepared statement of Mr. Artman follows:]

PREPARED STATEMENT OF CARL J. ARTMAN, ASSISTANT SECRETARY FOR INDIAN AFFAIRS, U.S. DEPARTMENT OF THE INTERIOR

Good morning Mr. Chairman, Madam Vice Chairwoman, and Members of the Committee. It is a pleasure to be here today to present the Department's statement on the land into trust applications, environmental impact statements (EIS), probates, appraisals and lease approvals processes and the number of each that are

pending. My testimony includes an overview of each item and the procedures that we follow as set forth in statute and regulation in order to process them.

Probate

I am pleased to announce that we have cut our inventory in half over the last two years. Moreover, 98 percent of our backlogged cases are ready for adjudication and distribution of assets. We plan to clear the backlog by the end of 2008. In fact, by 2009, we plan to handle the probate cases with BIA staff and eliminate the need for outside contractors.

The BIA took a critical look at the historically high caseload of probate cases in late 2005. An average Indian probate case took an excessive amount of time to prepare, adjudicate and distribute. Building on the reorganization and standardization of the probate program, the Bureau has reduced the probate caseload by one half over the last two years. Combining the efforts of staff dedicated to probate with a new comprehensive tracking system (ProTrac), the Department has improved case management and coordination of probate activities across three separate offices: the Bureau of Indian Affairs, The Office of Hearings and Appeals, and the Office of the Special Trustee for American Indians.

There are four phases for the completion of a probate case under BIA's new system. Using ProTrac, BIA monitors the performance of each case at each phase all the way through distribution of assets to the heirs. These phases are: (1) Pre-Case Preparation; (2) Case Preparation; (3) Adjudication; and (4) the Closing Process.

In 2005, we created a report regarding the probate backlog and, as of today, the BIA has completed 98 percent of the estates in the Case Preparation Phase and 86 percent of the estates have been distributed. The 2005 report included all estates where the decedent's date of death was prior to 2000 or whose date of death was unknown and the estate was part of the managed inventory as of September 30, 2005. As of September 21, 2007, the ProTrac system contains 53,802 cases, of which 17,208 cases are currently active. In FY07, the Bureau exceeded its annual probate goal by 31 percent.

Trust Land Acquisitions for Non-Gaming Purposes

The basis for the administrative decision to place land into trust for the benefit of an Indian tribe is established either by a specific statute applying to an Indian tribe, or by Section 5 of the Indian Reorganization Act of 1934 (IRA), which authorizes the Secretary to acquire land in trust for Indians "within or without existing reservations." Under these authorities, the Secretary applies his discretion after consideration of the criteria for trust acquisitions in our "151" regulations (25 CFR Part 151), unless the acquisition is legislatively mandated. Mandatory land acquisitions may be due to a land claim settlement with a specific Indian tribe.

There are two primary types of trust land acquisitions under this category which are processed for Indian landowners by the Bureau of Indian Affairs (BIA). They are: (1) on-reservation and (2) off-reservation. We have approximately 1,211 fee-to-trust submissions pending, of which over 1,100 are not yet ripe for decision. On-reservation requests maybe made by both tribal and individual Indians, off-reservation requests maybe made by Indian tribes.

Taking land into trust is an important decision not only for the Indian tribe seeking the determination but for the local community where the land is located. The transference of fee land title to trust status may have serious tax and jurisdictional consequences that must be considered before any discretionary action maybe taken. Additionally, the Federal Government must ensure that the land acquisition will be in the best interest of the applicant and that the Federal Government has sufficient resources to properly manage the property.

The 151 process is initiated when an Indian tribe or an individual Indian submits a request to take land into trust. The regulations require that an applicant submit a written request describing the land to be acquired and other required information. Once a request arrives at the BIA agency or regional office, it is entered into the BIA's Fee-to-Trust Tracking System. The request is reviewed to determine whether all information has been submitted and whether there are additional steps needed to complete the application. The BIA works with the applicant to complete the application.

The applicant must submit: (1) a map and a legal description of the land (a survey may be needed if the land cannot be described by an "aliquot" legal description); (2) a justification of why the land should be in trust; and (3) information on the present use of the property, the intended use of the property, and whether there are any improvements on the land.

The BIA must also take several internal steps necessary to assess the application. These include determining whether the land is on the applicant's reservation or con-

tiguous to it and whether the trust acquisition is mandatory or discretionary. We check whether there are access roads to and from the property as we will not acquire landlocked parcels.

We also determine whether the applicant already has an undivided fractional trust or restricted interest in the land it is requesting to have placed into trust, and how much trust or restricted land the applicant has an interest in overall. We assess whether the land is already under the tribe's jurisdiction and, if not, whether there are any anticipated additional responsibilities we would assume if the fee land were taken into trust. We may also examine if the property lies within the Indian tribe's approved Land Consolidation Plan.

For off-reservation land acquisitions, additional information is required. The BIA will request a business plan if the land is to be used for economic development. If the land is within the reservation of another Indian tribe, the applicant must receive written consent from the other Indian tribe's governing body if the applicant does not already own a fractional trust or restricted fee interest in the property to be acquired. If the land is off-reservation, we examine the proximity to the applicant's other trust or restricted land.

Once an applicant has submitted sufficient information, the BIA sends out notification letters to the state, county, and municipal governments having regulatory jurisdiction over the land, with a request to respond within thirty (30) days with a description of the impacts of transferring the land into trust regulatory jurisdiction, real property taxes and special assessments.

The next stage in the process, compliance with National Environmental Policy Act (NEPA) is essential to the BIA's decision-making, and takes substantial time to complete. These assessments are done to determine if the proposed use of the land is feasible or desirable and what effect the proposed project will have on the human environment, local habitation and wildlife. Depending on the type of environmental review done, this process can take months or years. A Categorical Exclusion (CAT–EX) can be used if there has been previous environmental documentation or there will be no change in land use for compliance with NEPA.

Applicants are encouraged to begin their NEPA process at the same time the BIA sends out the impact notification letters. The NEPA process begins with the publication in the Federal Register of a "Notice of Intent" to conduct an EA or EIS. Most of the non-gaming applicants conduct an EA.

In addition, an applicant must conduct a hazardous materials survey. This survey alerts the applicant and the BIA to any environmental hazards associated with the land that might conflict with the project's use or make the land undesirable.

For on-reservation applications, the Regional Office or Agency Superintendent makes the final determination of whether to approve the acquisition. For off-reservation non-gaming acquisitions, the Regional Offices send the recommended decisions on the applications to the Central Office in Washington, D.C., for review.

When the BIA approves the fee-to-trust application, it conducts a title examination to determine whether there are any liens, encumbrances, or other clouds on the title that make the land unmarketable.

After the decision, the BIA prepares a "Notice of Decision" to take the land into trust for publication. At this point, any governmental entity or individual with standing who objects to the decision to take the land into trust may file an appeal. If the appeals process upholds our decision to take land into trust, this is also published.

Environmental Impact Statements

When an Indian tribe submits a request to the BIA to fund, issue a permit for, or approve an undertaking, the BIA produces an EA or EIS, usually by contract, to help inform a federal decision by analyzing the project's potentially significant impacts to the environment. The most common BIA "federal actions" are lease approvals and transfers of land into or out of trust status.

Three occasions during the EIS process require a notice in the Federal Register: (1) the "Notice of Intent to Prepare an EIS" at the start of the process, (2) the "Notice of Availability of a Draft EIS" when a draft EIS is completed and issued, and (3) the "Notice of Availability of the Final EIS" at the time the final EIS is completed and issued. When the BIA is the lead agency, it prepares and issues the "Notice of intent to Prepare an EIS." The Regional Director oversees the scope of the project.

When the Draft EIS is complete, a "Notice of Availability" is published in the Federal Register by both the EPA and the BIA. The BIA's "Notice of Availability of the Draft EIS" informs the public that we are preparing or making available an EIS, and there is a timeframe provided in which they must provide their comments. Once

the agency has received and responded to comments, it publishes the "Notice of Availability of the Final EIS."

After issuance of the Final EIS, the BIA has sufficient information to make a policy decision on whether to approve the acquisition. The Regional Director or Agency Superintendent makes this decision for most non-gaming matters, and issues a Record of Decision (ROD) indicating whether the project has been approved or disapproved. Lawsuits on the sufficiency of the EIS and on the BIA's consideration of the regulatory criteria under 25 CFR Part 151 take place at this point.

The length of time necessary to prepare an EIS depends on the complexity of the proposed project. In addition, public comment may point out weaknesses in the EIS that require further studies or assessments before the Final EIS may be issued. Statements are susceptible to delays when multiple agencies must coordinate work on an EIS. Delays also occur when the Federal EIS is stalled because the tribe alters the project plan or scope.

Appraisals

Appraisals are conducted to provide impartial estimates of market value for a variety of real property trust interests. Consistent with regulatory requirements, the vast majority of trust transactions (including the purchase of fractional interests by the Indian Lands Consolidation Office) require an appraisal be conducted to ensure a fair return on the use of trust assets. Appraisals are generally used to identify a beginning rate at which to initiate the negotiation of lease terms.

In FY 2002, pursuant to Secretarial Order, the management and operation of the real estate appraisal function was transferred from the BIA to the Office of the Special Trustee for American Indians (OST). This transfer was conducted to eliminate the appearance and potential for a conflict of interest that could arise in response due to the reporting structure that required appraisers to report to the BIA Regional Directors who were requesting the appraisal. In FY 2005, funding for the program likewise was transferred to the OST.

Appraisals are requested by the BIA when required for a trust transaction. The BIA issues the appraisal request to the OST Office of Appraisal Services (OAS) which conducts the appraisal and returns the completed valuation to the BIA for its use. OAS appraisers aim to complete appraisals to meet the due dates requested by BIA.

Currently, there is a backlog of appraisal requests in every region except the Eastern region. the largest backlog is in the Alaska region, where unique conditions exist relating to the large number of native organizations that request appraisals directly from OAS instead of through the BIA, as well as weather and accessibility issues that limit the ability of OAS to conduct appraisals year round.

To address the backlog of appraisals, OAS has been working to carefully review each region's workload to determine those appraisals that are currently required. In addition, OAS is working to contract the vast majority of appraisal work to third parties, and to focus the role of staff appraisers on reviewing the appraisal, which is a federally inherent function. In March 2007, OST introduced the ITARS appraisal tracking system. All requests for appraisals are entered and tracked through this system. ITARS will provide a variety of management reports for evaluating the effectiveness of the appraisal program and an early detection system should the backlog begin to be a problem.

Lease Approvals

Commercial development leases may involve tribal land, allotted land, or both. Most reservations do not have master plans and the development proposals may cover hundreds of acres. While delays are often incurred in obtaining BIA approval of these negotiated leases, especially where allotted land is involved, significant delays may also arise from the tribal Land Use and Economic Development processes administered by various tribal departments and committees. Delays in processing by the BIA may involve either the terms of the leases themselves, or the need for additional supporting documents to satisfy statutory or regulatory requirements or other trust-based obligations to the Indian landowners.

These leases are typically negotiated by representatives of the parties. As a result, the appraisal needed to establish an acceptable "Minimum Rent" and the extensive documentation needed to comply with NEPA, are often not obtained by the lessee until after the basic lease terms have been agreed upon.

To expedite the process, appraisals may be obtained with the cost to the lessee, and submitted for review and approval by the Department's Office of Appraisal Services, but the terms of those appraisal assignments may need to be negotiated in advance. For the type of long-term mixed use projects being undertaken on allotted land located in urban areas, the BIA may also complete an economic analysis;

based on such an analysis, the BIA may then seek to negotiate a shorter lease term and/or require that the leases also provide for the payment of an "Additional Rent," to ensure that rent payments to the landowners keep up with land values over time.

Congressional incorporation of a single "land use" provision in the Indian Land Consolidation Act Amendments of 2000 has streamlined the landowner consent process for commercial leasing of allotted land, with the consent of only a percentage of the ownership now being needed. As amended in 1970, the Long-Term Leasing Act requires that BIA ensures, before approving a lease, that "adequate consideration has been given to the relationship between the use of the leased lands and the use of neighboring lands; the height, quality and safety of any structures or other facilities to be constructed on such lands; the availability of police and fire protection and other services; the availability of judicial forums for all criminal and civil causes arising on the leased lands; and the effect on the environment of the uses to which the leased land will be subject." Though these "impact-based" standards were enacted shortly after NEPA, the courts have held that leases of Indian trust lands are subject to NEPA and other federal land use statutes, and leases which have been approved without proper NEPA documentation have been found to be void even after the lessee has acted in reliance on the approval.

The Department's current trust reform effort will soon result in the publication of final, integrated "Business Leasing" regulations, including provisions which will, for the first time, implement the 1970 amendment to the Long-Term Leasing Act. The new rules will incorporate standards of review and review time lines for commercial leases, as well as standards of review for the assignments, subleases, and financing agreements entered into under such leases, which are generally subject to very strict "turnaround time" requirements.

The process may be complicated in some locations. Land ownership patterns and market forces will vary greatly, and the tribal role in the process may be that of: (1) a co-owner; (2) the local regulator of development, with responsibility for both pre-lease and post-lease approvals and permitting; (3) the administrator of the BIA's realty program under a 638 contract or self-governance compact; and/or (4) the lessee itself, via a tribal development enterprise. Whatever role(s) the Indian tribe may assume, the BIA and the Indian tribe will generally share the mutual goal of developing both tribal and allotted land to its highest and best use, on fair and reasonable terms consistent with the wishes of the landowners and the land use policies of the Indian tribe.

To that end, BIA offices and Indian tribes with significant commercial land holdings should work together to:

1. standardize lease provisions (to the extent possible), integrate duplicative review procedures, and clarify pro-lease documentation requirements, so that any necessary BIA input occurs earlier, and final lease approval becomes more of a formality;

2. facilitate project financing and tenant subleases through the use of form documents and/or stipulated approvals, while protecting the economic interests of the landowners in the event of a default or the relinquishment or reversion of undeveloped property;

3. minimize the risk of nonperformance to the Indian owners, by requiring (prior to lease approval) that lessees provide business references, financial references, final statements, project pro formas, site plans, and limited guaranties or other forms of security;

4. identify the steps needed to comply (prior to lease approval) with applicable tribal and federal land use laws, including NEPA and the National Historic Preservation Act, and the extent to which "programmatic" NEPA documents might be used for planning purposes and then supplemented for individual projects;

5. establish basic criteria for the establishment of 'Minimum Rent' for both improved and unimproved properties (including unimproved properties where adjustments must be made for offsite costs that will not be reimbursed, and improved properties where the terms of existing leases are being extended to facilitate new investment);

6. impose reasonable limits on the authority of owner-agents to consent on behalf of all of the owners (to assignments, subleases, etc.), and consider ways in which the arbitration remedy might be limited and/or defaults made subject to other negotiated remedies;

7. provide for the documentation and/or dedication of easements within leasehold projects, and eliminate obstacles to the establishment of offsite easements needed to provide access and utilities to new developments;

8. assemble development tracts (with permitted uses which are narrowly but reasonably defined) and develop broad-based marketing strategies, to increase the rental value of the land while at the same time furthering the Indian tribe's land use goals;

9. promote meaningful owner participation in project revenues, through specific "Additional Rent" structures/assumptions for various types of developments, and alternative forms of project ownership; and

10. provide for the aggressive enforcement of both monetary and non-monetary lease obligations, and the implementation of appropriate land records and lease management systems, to account for the use of the land and the income derived therefrom.

Distinctions can and should be made between the manner in which (and the terms on which) tribal and allotted land is leased, with the expectation being that those leases executed or approved by BIA on behalf of non-consenting individual owners will generally be subject to a higher standard. Comparisons should also be made between commercial leases of reservation lands and those involving neighboring lands administered by the states and cities.

This concludes my testimony. I will be happy to answer any questions the Committee may have. Thank you.

The CHAIRMAN. Mr. Secretary, thank you very much.

Let me try to understand what you just said. How does what you just said describe for me and the Committee the circumstance with the Gila River office building that has sat vacant for a year?

Mr. ARTMAN. I think the Gila River office issue is probably a separate issue, separate in part from the fee-to-trust issues, the general fee-to-trust application issues. I think on the Gila River, there are some unique circumstances. There are quite a few allotments. Many of the allotments are under 10 acres, and many of the developments, and this may be one of them, are oftentimes 100 acres plus.

In that case, we have to bring together the parties, rectify the needs of all, and come up with a lease that is satisfactory to all those parties. That may not be the case in this particular situation. I have had a number of conversations with the Gila River regarding fee-to-trust issues. Many of them recently have been on the right of way issues and the interaction they are having with the Superintendent in working out those issues.

I will be happy to follow up with Mr. Rhodes and discuss the issue further with him and get back to the Committee on that.

The CHAIRMAN. But you are aware that a building is sitting there, a brand new commercial building sitting there empty for over a year. I would think you would say, wait a second; let's fix this in the next couple of months; let's find out what is wrong and fix it. Is that not the case?

Mr. ARTMAN. I agree with you, Senator. We will do that.

The CHAIRMAN. You indicate that you don't have an accurate tracking system, a fully accurate tracking system for taking lands into trust. Is that what you are describing, the applications to take land into trust?

Mr. ARTMAN. That is correct.

The CHAIRMAN. Why would there not be an accurate tracking system? Why would the agency not have a complete list of everything that is now pending?

Mr. ARTMAN. That is a very good question, and I wish I could answer that. This was something that we discovered over the last few months. Even in preparation for the hearing, we had a number of

different numbers that were floating around on what the number of applications were that we had on reservation. Those are regional numbers, and then how many we had for off-reservation, which should come into the central office.

The problem that came up is that we can tell you that we have, for example, 37 non-gaming off-reservation applications at the central office. What I can't tell you is where they are, because many times they are sent back to the region or sent back to the tribe for incompleteness. That is not a decent tracking system. That is not what we need to have.

Now, expand that number out. That is just 37. Now, let's take it out to 11 regions where we have fee-to-trust issues and put the number into the thousands. We have somewhere between 1,200 and 1,300 applications for fee-to-trust in various stages of consideration.

In the testimony, the numbers that you have I think are as accurate as we can possibly get them. They break down what different stages the many of the applications are in. The civil-ed numbers are going to add up to 1,211, which is the latest number I have in terms of the applications.

One of the things that we started about four months ago was I asked some people to go out into the field, go out to the regions and look at how each region was doing their fee-to-trust. What were they using for the tracking system? What were they doing for the environmentals? How were they handling those issues? How was the communications with the local communities, how were those handled?

What came back was a quilt work, at best, of different processes and applications that they use. If there are 11 regions, there are probably more tracking systems than that on just how many applications are in the process. One of the things that we hope to unveil in weeks is our handbook, which will create a consistency for how to take land into trust, which will have at least internal guidelines, internal deadlines and time lines that we well adhere to.

Second, it will have the proper method for tracking this. Now, we have been consolidating a lot of our real estate matters on to a system called TAAMS. I don't know if that is the proper system to follow, or if we should take advantage of what we call FTS, the fee-to-trust tracking system.

But in any case, the current system that we have is unacceptable. If I can't turn to Chairman His Horse Is Thunder and say, this is how many I have from the Standing Rock Sioux Reservation, and this is the exact place where they are from the central office, perhaps they can do that in the regional office, but we can't do that from the central office as well. We don't have the proper ability to measure, and if we can't measure, we can't gauge success.

The CHAIRMAN. I don't understand how we are at a point at the Interior Department and the BIA where we have 11 regions. Is that correct?

Mr. ARTMAN. There are 12 regions; 11 that deal with fee-to-trust.

The CHAIRMAN. We have 12 regions and we are not even sure whether each region is using the same approach? Are there no procedures or guidelines, and are they not audited so that you have the regions handling these issues the same way?

Mr. ARTMAN. Well, two things. One, there has been a change in leadership. With that change in leadership, there has certainly been a new fervor to audit, as you say. Second, what we have found is that coast to coast there are different methods that are used by the different regions for handling the fee-to-trust issues, everything from what kind of an environmental standard from NEPA is required.

The CHAIRMAN. Why is that the case? Why would there not be a standard that had been put out years ago from the central office to say, here is the way you handle these; here are the guidelines?

Mr. ARTMAN. I think one of the issues is over the last 10 years, there have been 22 separate memos and guidelines that have been put out from what is now my office, giving direction on how one should—what environmental standard they should use, and there is even a contradictory one on that; to who should be handling off-reservation; who should be handling on-reservation. I don't blame the regions for having to pick up the ball and run with it. I think what you are seeing in the regions is certainly an entrepreneurial attitude towards fee-to-trust, and I certainly applaud them for that.

What we need to do is grab that same fervor and coordinate and make consistent the processes that we use from coast to coast.

The CHAIRMAN. Yes, but you know, we developed computers a few decades ago. It seems like gross incompetence to me that we don't even know how many applications exist. I don't know. Are the internal policies and guidelines, such as they are, available to the public and to the tribes so that we would know what those guidelines are?

Mr. ARTMAN. We do have some that are made part of the departmental manual and those are certainly available. I am not sure if the other memos, the other internal memos are on the internet or not or on the department's web site. Certainly, I would be happy to make those available.

The CHAIRMAN. Do you think those policies should be available and guidelines should be available so that there is transparency here?

Mr. ARTMAN. Well, certainly for the transparency's sake, but I would hope in a matter of weeks that we are not going to need those available because I would like to be able to promulgate something that creates more consistency.

The CHAIRMAN. There are 43 applications pending. Apparently, those are completed?

Mr. ARTMAN. There are 37.

The CHAIRMAN. Pardon me?

Mr. ARTMAN. There are 37 off-reservation the last time I checked.

The CHAIRMAN. All right. And so how long would one expect for those to be waiting for a decision? All that is needed is a decision, is that correct?

Mr. ARTMAN. No, not on all of those. Your number, 43, that was correct last week. As of yesterday when I was going through the numbers again, it changed to 37. And of those 37——

The CHAIRMAN. Wait, how does that happen?

Mr. ARTMAN. That is a good question. I don't know.

The CHAIRMAN. You are in charge.

Mr. ARTMAN. I agree with you, Senator, and this is one of the things——

The CHAIRMAN. I understand it is a good question. That is why I am asking it. How does it happen?

[Laughter.]

Mr. ARTMAN. This is one of the problems that I am tackling and I am going to resolve. In peeling away the onions on this issue, and mind you, we started peeling away the layers of this onion months ago. These are a lot of the things that we are finding out. One of the things I had mentioned to your staff is that we have 800 applications, essentially, 790, because those are the latest numbers I had about a month ago. Yet, I am being told at different times that we have 1,200 and 1,300.

The multiple tracking systems that we are using, the lack of consistent standards, is creating havoc for us, and that havoc creates havoc for the tribes as well.

The CHAIRMAN. It is creating havoc for the tribes. It is creating incompetence for you. I don't understand. You are there a short time, so you inherit what exists, but I don't understand this at all. As I started looking last evening at the briefing materials for this, and dating back to earlier this year when I was at Gila River and looked at that building and thought, well, how on earth can this be? Somebody make a decision, for God's sake. You build a building and the BIA says you need a master contract so you can't get this done.

Well, they say, do you have any acquaintance with the way the BIA works? I said, well, I have an acquaintance with the fact that we are paying money for a lot of employees. I know how it should work. It ought to be competent.

I am just trying to understand. Tell me about staffing. I understand the Solicitor's office is involved in a number of these processes. What is the staffing level over there? Do we have vacancies over there? Is that causing delays?

Mr. ARTMAN. I think there are some vacancies, but in terms of are they causing delays, I am not sure the number of vacancies at the Solicitor's office or whether or not they are causing delays. I would hope not. I think that it is well managed over there, and things get accomplished.

On our own side, there are about 1,000 vacancies throughout the BIA at any given time, out of 10,000 employees. We have about 150 to 200 vacancies in the trust area at any given time.

The CHAIRMAN. How soon do you think you can fix this? In six months, do you think you can tell us that you have guidelines and specific procedures and every region is going to be employing the same guidelines and procedures, and that you are going to have an understanding of exactly how many applications exist, where they are in the process, what the tribes can expect with respect to service on these applications?

I am not demanding that the Interior Department say yes or no, or demanding what the results should be. I am demanding that the Interior Department serve the interests here of making decisions on applications that are completed and filed in good faith. I think the system, very much like the system for which we hold hearings on the Cobell issue, I think the system is one that if I were a tribal

leader trying to get something through it, I would say what on earth is going on. It just appears to be staggering incompetence.

So can you in the next six months fix this so that we have something that is professional and something that we can look at and have our arms around and have some feeling that the tribes are going to be served in an appropriate way with respect to these applications?

Mr. ARTMAN. Yes, we can, sir. As I mentioned before, this is something that we started months ago, fixing this problem, focusing on the on-reservation issues and how we can fix the whole system, the whole process.

We are on the precipice of releasing that information and coming up with something cohesive that we can put out to the public and to our staff, so they can see what the consistent guidelines are and move forward. I will be sending out letters to not only the employees, but also to tribal leaders letting them know what is going on.

So within that six month time frame, beginning, if you want to start that clock today, soon hereafter you are going to begin to see those results. I think in six months we will have a very different picture of what is happening. I think you will see a much better picture.

In terms of knowing the number of applications out there and exactly where they are, short of putting myself out there saying I will hand count them myself, we will have accurate numbers for you in some way, shape or form.

The CHAIRMAN. Mr. Artman, one final point. I am going to submit a series of questions. I hope you can stay for just a bit.

Mr. ARTMAN. Of course.

The CHAIRMAN. Senator McCain and I were enormously frustrated at previous hearings because after 17 years or so, there were no regulations that had been developed and put in place with respect to taking land into trust, with respect to off-reservation land for purposes of gaming. That is a very important issue. I am not a big fan of off-reservation gaming, but the fact is after all of these years there had been no regulations developed for that. We asked that there be regulations. We understand that they have been finalized. Can you tell us about that?

Mr. ARTMAN. Sure. A number of weeks ago we made the decision, after reviewing the regulations, after the comments, the proposed regulations after the comments, that if we went final on what we had, there would be no additional need for comment or consultation because the change wasn't great. So we have made that decision and now the regulations are making their way through the Department of Interior and will be sent over to OMB for review, and up to Capitol Hill for your review I believe in hopefully about 60 days.

The CHAIRMAN. I will have additional questions, and if you would stay for a moment, I would appreciate that.

Next, though, let's hear from Ron His Horse Is Thunder. Ron is the Tribal Chair for the Standing Rock Sioux Indian Reservation at Fort Yates, North Dakota. Mr. Chairman, thank you for coming to Washington, D.C. today. We appreciate your attendance. Your entire statement will be made a part of the record. We would encourage you to summarize. Thank you very much.

STATEMENT OF RON HIS HORSE IS THUNDER, CHAIRMAN, STANDING ROCK SIOUX TRIBE

Mr. HIS HORSE IS THUNDER. Thank you, Mr. Chairman, for giving me the invitation to come today. I will summarize my statement.

I am going to touch upon three of the issues of the five that we are concerned about in terms of backlogs. Those three issues are land-to-trust, appraisals and probates. In the land-to-trust issue, the Standing Rock Sioux Tribe perspective on this, for the last 25 years we have had absolutely no applications pass through from fee to trust, absolutely none. The tribe itself has over 10 applications currently pending, for a total of 19,000 acres. That land we currently pay taxes on to the State of South Dakota. We shouldn't have to do that.

There are no environmental concerns that we have been told about in terms of these lands. There have been no substantive objections by the county. These are agricultural lands. We already have a casino in North Dakota. We already have a casino in South Dakota. We are not asking for this land to build casinos on, so that is not an issue at all.

So we are concerned about how long this application process takes, given that our tribe is in a position to buy additional land on our reservation.

One of the real concerns for me, the tribe, although we don't like having to pay the taxes, we can pay the taxes. My real concern with this is there are individual tribal members who have bought lots, small acreage, and built houses or bought houses that were on fee land. They have had their applications in for just as long as the tribe. I know that a couple of our tribal members have lost their homes, have lost their land to tax foreclosure sales. I know that has happened. That is what really concerns me about this.

So I think there is lots of opportunity for success for the Bureau of Indian Affairs. In terms of appraisals, speaking from experience on this, my mother has been for the last year and a half trying to consolidate some small acreages of land. I mean, that is the whole concern about Indian Country is fractionalization of lands. Standing Rock Sioux Tribe has the most fractionated interests of any tribe in this Country. In my mother's case and other cases of our tribal members, in terms of trying to consolidate their lands, it is a big issue for us.

She has had her application in for over a year and a half. She recently asked me to check on it, and I said, Mom, they haven't even done the appraisals yet. She says, well, son, you are the Chairman. Can't you get something done? And I said, Mom, I can only push them so fast. They haven't even done the appraisal. They haven't even gone out to the land to do the appraisal, much less walked it.

My own transfer of land, I transferred 40 acres for 40 acres. It wasn't even a consolidation. I took 40 acres of my own land and traded for 40 acres of tribe land. It took me over a year to get that done, and I am the Chairman. Not that I have any special status over anybody else, but I can call the Superintendent on a daily basis. So that is a problem.

Probates. Again, speaking from experience here, I talked to my mom on this. My grandfather passed away 10 years ago. It took over a year to get the probate done. My grandmother passed away about 16 years ago. It took over a year to get the probate done. What concerns me about this for tribal members is not only the time, but the places they have to go to hear the probates. My grandfather was enrolled at the Cheyenne River Reservation. They had to probate on Standing Rock, 105 miles away.

My grandmother was enrolled in the Standing Rock Sioux Tribe. Her probate was heard on the Pine Ridge Indian Reservation, 300 miles away. When asked why they had to go to Pine Ridge when she was enrolled in Standing Rock, they said, well, if you want to wait a few more years, we will have it on Standing Rock.

I have an elder who passed away about seven months ago. There is no hearing scheduled for that one as well.

Now, there is a new concern for us, and that is that we used to have a Bismarck office for probates. They moved it to Rapid City a couple years back. Now, we are being told they are moving it to Billings, Montana. That is more than 500 miles away from my people. They have done this, this moving and closing of offices, without any consultation to the tribes, so that concerns us.

Currently, Standing Rock Sioux Tribe has a backlog of 203 probates officially, officially, according to the Office of Hearings and Appeals. But the Bureau of Indian Affairs itself tells us you can add another 100 onto the Standing Rock Sioux Tribe. In the Great Plains region alone, we have over 1,399 cases that are pending at this point in time.

What really exacerbates the problem is that the Bureau of Indian Affairs will no longer house wills made by our tribal members. That just creates a worse problem, especially if we are talking about consolidation of lands, et cetera, and backlog of cases.

I see that my time is up, Senator. Thank you very much.

[The prepared statement of Mr. His Horse Is Thunder follows:]

PREPARED STATEMENT OF RON HIS HORSE IS THUNDER, CHAIRMAN, STANDING ROCK SIOUX TRIBE

My name is Ron His Horse is Thunder. I am Chairman of the Standing Rock Sioux Tribe of North and South Dakota. I want to thank the Committee for the opportunity to present testimony at this important hearing.

The Standing Rock Sioux Tribe like many Tribes throughout the United States is suffering real and enduring damage from the failure of this Department of the Interior to do what it should do as a matter of course. The record of this hearing will reflect that throughout Indian county leases are not getting approved, Rights of Way are not being granted, land is not being taken into trust, estates are not being probated, and new trust lands are not being proclaimed as reservations. These individual failures represent the Department's inability to exercise the most basic of its trust responsibilities to Tribes and Indian people. This responsibility is most clearly defined in the Indian Reorganization Act. It is the promise of this Act, which serves as the foundation for today's self-determination policy, which is being severally undermined by the backlog and delays that the Committee will hear about today and which will be part of the record for this hearing.

The Indian Reorganization Act (IRA) was one of the most important pieces of Indian legislation in American history. Based in considerable measure on the findings of the Meriam Report, the IRA altered the basic thrust of the allotment policy that immediately preceded it. Where the allotment policy sought to remove lands from the Indians, and destroy tribal life and institutions, the IRA sought to rebuild the reservations and the tribes, and to provide new opportunities for economic growth and self government on the reservations.

As the Supreme Court observed in *Duro v. Reina,* 495 U.S. 676, 691 (1990): "[t]he 60 years preceding the Act [IRA] had witnessed a calculated policy favoring elimination of tribal institutions, sale of tribal lands, and assimilation of Indians as individuals into the dominant culture." Proposed initially by the Roosevelt Administration to change that sorry history, the IRA was personally supported by President Franklin D. Roosevelt as "embod(ying) the basic and broad principles of the administration for a new standard of dealing between the Federal Government and its Indian wards."[1] As the U.S. Supreme Court observed in *Mescalero Apache Tribe v. Jones,* 411 U..S.. 145, 152 (1973), quoting H..R. Rep. No. 1804, 73rd Cong., 2d Sess. 1 (1934), the IRA was intended "'to rehabilitate the Indian's economic life and to give him a chance to develop the initiative destroyed by a century of oppression and paternalism.'" The Court has also held that "[t]he overriding purpose of. ..[the IRA] was to establish machinery whereby Indian tribes would be able to assume a greater degree of self-government, both politically and economically." *Morton v. Mancari,* 417 U.S. 535, 542 (1974).

During the consideration of this Act, Representative Howard of Nebraska, Chairman of the House Indian Affairs Committee pointed out, a chief cause of the decline suffered by the Indians had been the policy of the General Allotment Act. Accordingly, the chief purpose of the IRA was to eradicate the effect of that Act. To reverse the allotment policy and permit the rebuilding of tribal land holdings, the IRA contains what remains today the principal statute authorizing the Secretary to acquire lands in trust for a tribe or individual Indian, Section 5 of the Indian Reorganization Act (IRA), 25 U.S.C. 465.

Through the past six decades, both Republican and Democratic Administrations have used Section 465 to further the purposes of the IRA to benefit Indian tribes and individual Indians. Unfortunately, we have now encountered a Department that for reasons that have yet to be explained to me has determined that it will no longer move forward with the policy of the IRA. A fear held by some in Indian country is that the Department has determined that any action that it is asked to take for the benefit of tribes or Indian people must first be weighed against other concerns unrelated and in some instances completely contrary to the interest of Tribes. I have heard repeatedly that the decisions before the Department must balanced against other considerations. All too often these "other considerations" prevail and the interests of the tribes remain unfulfilled. This balancing process has paralyzed the Department's exercise of its trust responsibility .

The balancing makes me ask the following question. Has the Department concluded that the United States has fulfilled its mandate under the IRA and that the Department believes it no longer has an over arching responsibility to improve the status and conditions of Indian country? To be clear, the mandate has not been met at Standing Rock. Nor has it been met on most Reservations. As you well know, the health and social conditions and needs on my Reservation and many throughout Indian country are staggering. If the Department is failing Indian tribes with regard to trust acquisitions, probate and land appraisals—work it has been doing for over 150 years, how can Tribes trust the Department to work with us to solve the problems that tribes face in the 21st Century. I will address the two primary topics of to day's hearing.

1. Land Into Trust

The most basic promise of land restoration has not been fulfilled by the IRA. As a result of the allotment policy, at Standing Rock we lost more than one million acres of land to non-Indian allotment. Today, the Tribe retains trust title to only 300,000 acres of our original 2.3 million acre reservation. Our tribal members hold approximately another 500,000 acres of land in trust allotments. The remainder of our reservation is held in fee.

In the last 25 years, no lands at Standing Rock have been taken into trust for the benefit of the Tribe. Today at Standing Rock we have ten applications for land to be taken into trust for the benefit of the Tribe, totaling just over 19,000 acres of land. Some of these applications have been pending since 1992. These applications concern lands that were once reserved for the Tribe's exclusive use. Most of this land is intended to enhance the Tribe's agricultural and livestock programs. There are no environmental concerns and no substantive objections from any party. These are the exact type of the lands that under the Indian Reorganization Act, the Department should be returning to trust as a matter of regular course. Yet, it has not happened.

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[1] Letter to Honorable Burton K. Wheeler, April 28, 1934, Sen. Rep. No. 1080, 73rd Cong. 2d Sess. 3 (1934).

2. Probate

Another fundamental area where the Department's inexplicable delays cause both economic and emotional hardship is in the area of probate. How can Tribes and families properly manage their realty if it is stuck in prolonged probate and sitting idle?

While the United States has been probating Indian trust estates for many years, it seems that with each passing year and with each new Department initiative, the process gets worse. Indian families, who wish nothing more than to bring closure to the death of their loved one, do not get closure. What they get are delays, excuses, and on-going frustration. Allotted Tribal lands, that could be leased out for grazing or agriculture, or other productive uses, sit idle, and generate no income to the Indian family.

The Bureau's probate regulations require Federal officials to perform four tasks: (1) find out about a Native person's death; (2) prepare a probate package; (3) refer the completed package to the Office of Hearing and Appeals; and (4) require a "deciding official" to determine how to distribute the property and/or funds deposited in an Individual Indian Money account and make the distribution. 25 CFR Part 15.4.

Sounds pretty straight forward. In reality, it is a nightmare. At Standing Rock, we are informed by Bureau officials that there is a backlog of 203 probate cases awaiting resolution. In the Great Plains Region, we are told the probate backlog stands at 1,399 (one thousand three hundred ninety-nine). Standing Rock Agency officials have informed our Tribe that the Office of Hearing and Appeals does not want to receive any more probate applications because of their current backlog. Tribal officials have stated that there are an additional 100 probate cases to add to the 203.

What I do not understand is the lack of notice to the Tribal family. Families wait years for resolution, with no certainty that anyone at the Bureau is actively working on the probate package and referring it to OHA, or that an OHA deciding official is actively reviewing the file.

The Secretary of the Interior's duties are to probate trust or restricted property held in the estate of an Indian decedent. I hear so much about the Federal Government's trust responsibility to the Indian people. But as Chairman, I so seldom see it practiced.

To make matters worse, Bureau officials announced several years ago that their offices could no longer be the repository for the wills of Tribal members and that individuals would have to make other arrangements for the safekeeping of their wills. One of the required elements of the probate package which the regulations require to be provided to the Bureau includes "all originals or copies of wills and codicils, and any revocations." 25 CFR 15.104(8). The trustee's action has the effect of making their own job more difficult by refusing to be the repository for the decedent's last will and testament.

The Great Plains Tribal Chairman's Association learned last week from Bureau officials at the Rapid City OHA office that they have been instructed to close that facility and move to Billings, Montana. Billings, Montana is about 430 miles from our Administration offices at Fort Yates. The Tribal Chairman's Association passed a resolution objecting to the move, a decision made without Tribal consultation. We fear that the Department does not understand that the changes it makes to achieve some perceived notion of efficiency and streamlining, in fact achieve the opposite result of unnecessary delays and added costs to Indian people and the Tribe.

Instead of closing offices and moving staff, the Bureau should devote its resources to help Tribal families establish life estates and family trusts that avoid the need for probate. The Bureau should assist Indians to purchase fractionated interests so that trust or allotted lands are put to use and generate income for Indian families. Rather than helping to solve chronic problems that plague our reservations through innovative and creative solutions, the Bureau perpetuates problems and contributes to the common view in Indian country that the system is broken, and the common lament that no one should bother trying to fix it, because no one really cares.

I would like to thank the Committee again for the opportunity to testify and would be happy to answer any questions that you may have.

The CHAIRMAN. Mr. Chairman, thank you very much for your testimony. We appreciate hearing from you today.

Next, we will hear from the Honorable William Rhodes, Governor of the Gila River Indian Community in Sacaton, Arizona.

Chairman Rhodes, thank you.

STATEMENT OF WILLIAM R. RHODES, GOVERNOR, GILA RIVER INDIAN COMMUNITY

Mr. RHODES. Thank you, Chairman Dorgan and other Committee members for the opportunity to testify regarding the impact of BIA delays on tribal economic development.

The Gila River Indian Community is the largest Indian community in the Phoenix metropolitan area, with enrolled population of over 19,000. Over the years, the community has experienced BIA delays in a number of areas that have detrimentally impacted the community's economic development initiatives. Of particular concern, the community has experienced significant delays in obtaining BIA approvals of leases of tribal land. The community's reservation is located in the very rapidly growing Phoenix metropolitan region, and in many instances its tribal business ventures compete with non-commercial entities that are sometimes literally across the street from the reservations.

When the community faces bureaucratic challenges at BIA that affect the operation of its tribal business ventures, it puts the tribe at a disadvantage compared to the entities not subject to BIA leasing oversight. Specifically, the community is concerned with the BIA's imposition of unnecessary regulatory burdens in the review and approval of commercial leases of space within the existing tribal buildings. BIA's position evidences a clear lack of understanding of the competitive and time-sensitive commercial leasing market in which the community seeks to compete for tenants.

The community has also encountered problems associated with the BIA's failure to properly document rights of ways throughout the reservation, which have impacted the community's business agreements and land management planning. Additionally, the community has experienced BIA delays regarding approvals of leases associated with the community's land acquisition process such as the community's efforts to acquire allotted lands within the reservation are frustrated.

The community has been in protracted discussions with the BIA lasting over a year regarding a master lease between the community and the wholly owned governmental department authority created by the community to develop a large land parcel. Each month the master lease remains pending at BIA, the development authority cannot sublease the land under the master lease, and a proposed business park and retail development has no tenants.

The community is concerned that the BIA has taken the position on the master lease that the community must conduct an environmental impact statement for all the land under the master lease. The community has already conducted the necessary environmental assessments for a majority of the land that would be subleased under the master lease, and the EIS would take more than 18 months to complete, given the BIA's delays on EIS review as well.

It is hard for the community to understand why the BIA would impose these additional requirements on a simple ground lease between the two entities, especially when the community has already conducted EA's for the land to be developed under the master lease. Moreover, the community is concerned with the overly bureaucratic position taken by the BIA with regard to the agency's re-

sponsibility to review and approve commercial leases of space within already existing buildings. As an example, the community has built a corporate center, which you viewed earlier at the beginning of the session, for the authority to lease office space to third party tenants, to draw the potential business partners and raise lease revenue.

At first, the existing office building parcel was contained under a master lease pending at BIA. Then the community revised the master lease to remove the office building to expedite leasing of the office space. However, since then, BIA has sought to employ the regulation at 25 CFR Part 162 for the commercial leases of office space. These regulations are designed to protect tribes and allottees from onerous land deals. BIA is using these regulations to impose a variety of requirements, including mortgage-related and lease value requirements, that appear to us to be unrelated to an office building and leasing of commercial office space.

In an era when tribes are directly competing with non-Indian off-reservation businesses and developments for commercial tenants and developments, these regulations and regulatory burdens imposed by the BIA place Indian tribes at a serious disadvantage with non-Indian competitors. With respect to this office building, office space has stood empty for too long.

A solution is for BIA to work with us as a proactive partner, as we do with all our other business partners, by taking the time to understand our short- and long-term economic goals. BIA should be working with us to ensure a streamlined lease review process that more accurately reflects the lease market in which we operate that avoids delays based on unnecessary regulatory barriers.

My time is up, Senator. Thank you.

[The prepared statement of Mr. Rhodes follows:]

PREPARED STATEMENT OF WILLIAM R. RHODES, GOVERNOR, GILA RIVER INDIAN COMMUNITY

Introduction

I am Governor William Rhodes of the Gila River Indian Community (the "Community"). On behalf of the Community, I want to thank you, Chairman Dorgan and other distinguished Members of the Committee for this opportunity to submit written testimony on the impact of Bureau of Indian Affairs (BIA) administrative delays on tribal economic development.

By way of introduction, the Gila River Indian Community was formally established by Executive Order in 1859. The Community was thereafter expanded several times and currently encompasses approximately 375,000 acres. The Community is comprised of the Akimel O'odham (Pima) and the Pee Posh (Maricopa) people. We are the largest Indian Community in the Phoenix metropolitan area, with an enrolled population of over 19,000. We have a long history in the Phoenix Valley, dating back thousands of years.

Over the years, the Community has experienced BIA delays in a number of areas that have detrimentally impacted the Community's economic development initiatives. Of particular concern to this hearing, the Community has experienced significant delays in obtaining BIA approvals of leases of tribal land. These delays result in lost economic opportunities to the Community in situations in which potential development or tenant deals are never culminated and in which the Community does not realize lease revenues for months while lease agreements are pending BIA approval. It is important at the outset for the Committee to note that the Community's reservation is located in the very rapidly growing Phoenix metropolitan region and, in many instances, its tribal business ventures compete with non-Indian commercial entities that are sometimes literally located across the street from the reservation. Therefore, when the Community faces bureaucratic challenges at BIA that affect the operation of its tribal business ventures, it puts the tribe at a competitive disadvan-

tage compared to entities not subject to BIA leasing oversight. Although the Department of Interior is supposed to support the policy of tribal economic development, our competitors only gain from the BIA lease approval delays we experience.

As described below, the Community is particularly concerned with the BIA's imposition of unnecessary regulatory burdens in the review and approval of commercial leases of space within existing tribal buildings—bureaucratically-created, anachronistic burdens that evidence a clear lack of understanding of the competitive and time-sensitive commercial leasing market in which the Community seeks to compete for tenants. The Community has also encountered problems associated with the BIA's failure to properly document rights-of-way throughout the Gila River Indian Reservation which have impacted the Community's business agreements and land management planning. Additionally, the Community has experienced considerable BIA delays in relation to approval of appraisals associated with the Community's land acquisition process, such that the Community's efforts to acquire allotted lands within the Community's Reservation are frustrated.

This testimony focuses on specific areas where the Community has seen firsthand the impact of BIA delays on its tribal economic development. This testimony also proposes some short-term and long-term solutions for addressing the issues identified. These delays, as described below, impact delivery of a variety of BIA services to the Community to such an extent that the quality of the trust relationship between BIA and the Community is being negatively affected.

I. BIA Review of Commercial Leases

A. Master Ground Lease Approval Delays

The Community has suffered from the ramifications of BIA delays with respect to its commercial leases on a number of occasions. As an illustrative example, the Community has been in protracted discussions with the BIA lasting over a year now regarding a Master Lease between the Community and a wholly owned governmental Development Authority created by the Community to develop a 2,400 acre parcel. The Master Lease is a ground lease for development of a parcel of land that will allow the Development Authority to sublease land to tenants for an industrial park and retail establishments, among other uses. Each month the Master Lease remains pending at BIA, the Development Authority cannot sublease the land under the Master Lease and a proposed business park and retail development have no tenants.

The Master Lease is valuable to the Community and the Development Authority because it will help attract non-Indian business tenants and potential business partners to the reservation and generate significant lease revenues. Unfortunately, the Master Lease approval process has been pending over a year and has become mired in unnecessary bureaucratic delay that is impacting the Community's economic development plans. The Community is particularly concerned that the BIA has taken the position on the Master Lease that the Community must conduct an Environmental Impact Statement (EIS) for all the land under the Master Lease. The Community has already conducted the necessary Environmental Assessments (EAs) for a majority of the land that would be subleased under the Master Lease and the EIS will take more than 18 months to complete given the BIA's delays on EIS review as well.

It is hard for the Community to fathom why the BIA would impose this additional requirement on a simple ground lease between two tribal entities, especially when the Community has already conducted EAs for the land to be developed under the Master Lease. Because the BIA has held up approval of the Master Lease for so long, the Community has had to restructure several tribal commercial projects within the proposed lease to avoid significant delays and escalating project costs, and may have to ultimately restructure its long-term development plans for these parcels to avoid unnecessary delays.

B. Office Suite Leases

Moreover, the Community is increasingly concerned with the overly bureaucratic positions taken by the BIA with regard to the agency's responsibility to review and approve commercial leases of space within already existing buildings. BIA has sought to employ the regulations at 25 CFR Part 162 in reviewing commercial leases of office space. These regulations are designed to protect tribes and allottees from onerous land deals. BIA is using these regulations to impose a variety of requirements, including mortgage-related and lease value requirements, that appear to us to be unrelated to an office building and leasing of commercial office space. Mortgage insurance related requirements have no bearing on a tribally financed office building that is not carrying bank mortgage.

As one example, the Community constructed a corporate office building on reservation that was sited on land originally included in the Master Lease pending review at BIA, discussed above. Due to the significant delays being experienced at BIA regarding approval of that Master Lease, the Community restructured the scope of the Master Lease to exclude the parcel on which the commercial office space is located in the interest of expediting the Community's ability to lease out that office space separate from the Master Lease. Subsequently, BIA took the position that the commercial space within that building was subject to a variety of BIA lease approval requirements including mortgage related requirements. The Community views the BIA's perceived responsibility to review and approve commercial leases of space within existing buildings to be an anachronistic throw-back to the days of the Indian agent.

The Community, like many Indian tribes across the country, no longer needs the safety net of having the BIA review and approve commercial leases and ground leases of Community lands—including leases of individual office suites. The Community has employed or engaged highly trained professionals to represent its interests in development deals and has successfully negotiated a wide range of commercial transactions without the need for Federal bureaucrats to look over the Community's shoulder and micromanage individual office suite leases. These BIA regulations serve as a significant impediment to the successful negotiation and execution of commercial leases in today's business climate. In an era where Indian tribes are directly competing with non-Indian (off-reservation) businesses and developments for commercial tenants and developments, these regulations and the regulatory burdens imposed by the BIA place Indian tribes at a serious disadvantage with non-Indian competitors. We do not understand the BIA's rationale for requiring an EIS for our Master Lease and its overly bureaucratic approach to the Community's efforts to lease office space within an existing office building. With respect to the office building discussed above, the Community has been forced to find Community entities to begin to fill the office space, and its efforts to find third-party tenants has been delayed and hindered.

The ironic thing about BIA's current posture is that in the past they have allowed lease terms that were unfavorable to the Community, particularly in the Community's industrial parks where the BIA allowed long term leases (60+ years) with poor economic terms, and with industrial tenants who are engaged in noxious activities, including bio-hazard wastes, solvent recycling, munitions testing, which have caused significant environmental harm to the Community. It seems untenable to us that now, when a large portion of a commercial office building space remains empty, the BIA would start to raise a variety of unrelated lease requirements that hinder our ability to lease out the space.

Proposed Solution: With regard to the BIA delays on lease reviews, the solution is for BIA to work with us a pro-active partner, as we do with all of our other business partners. By taking the time to understand our short and long term economic goals, BIA should be working with us to ensure a streamlined lease review process that more accurately reflects the lease market in which we operate and that avoids delay based on arbitrary, unjustified and unnecessary regulatory barriers. The other solution is to grant tribes the authority to review and approve ground leases in their governmental capacity and for BIA to facilitate, through technical assistance or other means, increased tribal responsibility for lease approvals.

II. BIA Documentation of Rights-of-Way

Another area of continuing concern is the failure of the BIA to properly document rights-of-way throughout the Gila River Indian Reservation. By way of example, the Community has established the Gila River Indian Community Utility Authority (GRICUA) to provide electrical service throughout the Reservation. Currently, GRICUA serves a small number of residential customers and a growing number of commercial customers on the reservation. The San Carlos Irrigation Project (SCIP) serves the vast majority of customers, residential and commercial, on the reservation. In its efforts to analyze the SCIP facilities, GRICUA has made repeated requests for information related to the condition of SCIP facilities on the Reservation without success. Moreover, it is unclear whether the BIA or SCIP have properly recorded rights-of-way underlying the SCIP electric and irrigation systems throughout the Reservation. This became a serious concern when the Community and GRICUA analyzed whether to submit a proposal in response to the currently pending FAIR Act solicitation where BIA intends to privatize SCIP irrigation and electric operations. Without proper rights-of-way across tribal and allotted lands, any operator of the SCIP system could be in an immediate trespass situation. To date, SCIP and BIA have not provided any of the requested information to assist the Community and GRICUA in evaluating the on-reservation SCIP system rights of way.

Proposed Solution: BIA needs to act as a trustee in assisting the Community with resolving rights of way issues in the manner necessary for the Community to be able to proceed with its land management and development plans and to react in a timely manner to the rapid and pressing development occurring along reservation borders. We understand the Committee may be considering a hearing on Rights of Way issues in Indian Country. The Community would be very interested in testifying at such a hearing and proposing at that time some solutions to these overarching issues affecting Indian Country.

III. BIA Preparation of Appraisals for Land Acquisition Purposes

In addition to BIA delays associated with commercial leases and rights-of-ways, the Community has also seen BIA delays in connection with its land acquisition efforts. Gila River Indian Community was chosen as one of the first tribes to participate in the Department of Interior's Indian Land Consolidation pilot project. The Community was chosen because of the very high rate of fractionated land within the Reservation. After 3 years under the ILCA pilot project, the Department pulled out of land consolidation efforts at the Community, citing the high cost of acquiring land in the Phoenix region. Since being removed from the ILCA pilot project, the Community has established its own land consolidation program, but has encountered roadblocks in its self-funded effort posed by BIA delays in issuing land value appraisals. As a result, despite the Department's keen interest in assisting tribes with consolidating their fractionated land base and the fact that the Community is now self-financing the entire land acquisition program, BIA delays are again frustrating an important policy and economic development objective of the Department and the Community.

A. Land Acquisition Process

On April 19, 2006, the Gila River Indian Community Council (the "Community Council") approved GR–51–06 which enacted the Community's Land Acquisition Policy (the "Policy"). The Policy outlines a process through which the Community may acquire whole allotments of land within the Reservation owned by Community members or other Indians to prevent the transfer of allotted land within the Reservation to fee status, so that such land is preserved as Federal Indian trust land. Under the Policy, the Community may also consider land exchanges at the request of a landowner. Prior to the enactment of the Policy, the Community Council enacted GR–184–04 which established a Land Acquisition Trust Fund (the "Fund") to be used for Community land purchases intended for governmental use and purposes and for costs and expenses associated with land acquisitions. The Community Council appropriated millions of dollars to the fund as an initial capital appropriation to the Fund. The Community Council may make subsequent transfers to the Fund as deemed appropriate.

Briefly, the process for land acquisition under the Policy is as follows:

(1) upon receipt of a Landowner's completed application, BIA forwards the application to the Executive Office, who then transmits the application to the Law Office and the Department of Land Use Planning and Zoning (LUPZ);

(2) the Law Office acknowledges receipt of the application and requests an appraisal, title status report, and survey from the BIA and the U.S. Department of Interior's Office of the Special Trustee (OST);

(3) pursuant to the Policy, LUPZ gathers data about the allotment which will form the basis for a Report and Recommendation for Purchase to the Community Council;

(4) upon a Landowner's receipt of appraisal from BIA, the Law Office and LUPZ staff meet with the Landowner to obtain a copy of the appraisal;

(5) LUPZ and Law Office arrange to inform the districts and the Community's Planning and Zoning Commission of the potential land purchase at their respective regularly scheduled meetings; and

(6) the Law Office and LUPZ prepare a Report and Recommendation and sale documents for Natural Resources Standing Committee and the Community Council for its consideration and approval.

B. BIA Delays with Appraisals

The Department of Interior's Office of the Special Trustee (OST), Office of Appraisal Services (OAS) prepares all of the appraisals of the allotments to be considered for purchase by the Community. Initially, the Community was informed by BIA that appraisals would be completed in ninety (90) days. However, it became apparent in late summer 2006 that in several cases, the ninety (90) day period was not

being met. On August 25, 2006, LUPZ and Law Office staff met with the BIA Superintendent to discuss how the appraisal process could be expedited.

At that time, the Community was assured by BIA that appraisals would be completed three (3) weeks after receipt of the request from the BIA. To their credit, the BIA also has made some changes in staffing to accommodate the requests they are receiving from Landowners. Despite their good intentions, however, only a handful of Landowners have received appraisals.

As a followup to the August 25, 2006 meeting, in December 2006, representatives from LUPZ and the Law Office met with Pima Agency, OAS and the Deputy Director, Appraisal Branch, BIA, to discuss utilizing market analyses in lieu of appraisals for purchase of fractionated interests of land only. It was understood at that time that OAS would be hiring a contractor to perform the market analyses, and that the Community would not be receiving market analyses until after March 2007. However, the Community has not yet received a market analysis in lieu of an appraisal.

The Community's June 2007 review of appraisals received revealed that about 18 landowners received appraisals completed by OAS. The Community's review also indicated that of the 18 landowners that received appraisals, 15 landowners contacted the Community to proceed with possible land purchases. Furthermore, the same review also revealed that the longest and shortest amounts of time from the Community's written request to landowner receipt of appraisal was approximately sixteen (16) and seven (7) months, respectively.

Seven to sixteen months is an inordinately lengthy amount of time to complete appraisals in a rapidly changing market, and the amount of time taken to receive an appraisal is the single activity that takes the most time to complete in the Community's land acquisition process.

C. BIA Miscommunication to Landowners

In June 2007, it came to the Community's attention that Pima Agency was informing allottees that the Community lacked funds to purchase land under the Policy. Pima Agency's misstatements appear to stem from its misunderstanding regarding completed appraisals and their effect, if any, on the Fund and the Community's ability to purchase land under the Policy. Pima Agency requested the Community to provide a resolution stating that "GRIC is interested in purchasing the remaining landowner's interests and that funding is available for further acquisitions." Apparently, Pima Agency's request seemed to imply that the approximate total dollar value of land appraised at that time, $14 Million Dollars, exceeded the Community's initial appropriation to the Fund, which Pima Agency believed rendered the Community financially incapable of purchasing land under the Policy. Based on this misunderstanding, Pima Agency was not processing the Community's requests for appraisals. For several reasons, Pima Agency's assumptions and conclusions were incorrect, and the Community responded to Pima Agency by letter dated June 25, 2007.

D. BIA Use of Purchase Agreement and Delay of Closing

Prior to the Community's enactment of the Policy, the Community purchased allotted land using a Purchase Agreement to which BIA was a party and signatory. The Purchase Agreement was utilized by the Community, BIA and a landowner in spring 2006 when the Community purchased ten (10) acres. Based on precedent, and after the enactment of the Policy, in January 2007, the Community utilized the same Purchase Agreement when concluding the purchase of twenty (20) acres. Abruptly and without notice, and despite being fully aware in advance that the Community would be purchasing the twenty acres, BIA declared that it could not be a party to the Purchase Agreement. BIA's abrupt change of position was not communicated to nor anticipated by the Community, and resulted in a two (2) month delay in concluding the purchase while the Community and Pima Agency developed a mutually acceptable procedure for concluding future land purchases that did not include BIA as a party to Purchase Agreements.

E. Landowners' Applications for Sale of Land

Until approximately 2 weeks ago, when the Community received notice from the BIA that a landowner wanted to sell land to the Community, BIA would inform the Community by letter of a landowners' interest to sell, and included a copy of the completed land sale application and an allotment sheet describing all of a landowner's interests. Recently, the Community received only cover letters and allotment sheets, but not landowners' applications. Believing the lack of applications was an oversight, the Community telephoned Pima Agency, requesting the missing applications. Pima Agency informed the Community that BIA would no longer be pro-

viding the Community with landowners' applications for sale of land, citing privacy concerns.

Prior to not receiving the applications, the Community was not made aware of BIA's decision to not provide the Community with copies of the applications. While BIA's concerns may have some merit, the landowners' applications are the only documents the Community will have that are completed by the landowners themselves and in which they indicate the allotments or portions thereof that they want to sell to the Community. As a buyer in a negotiated sale, it is completely reasonable for the Community to have a copy of the landowners' applications to verify exactly what land the landowners have an interest in and what they want to sell. Arguably, by completing an application for sale of their land to the Community, the landowners have provided implied consent to providing the necessary information to the Community. And, if there is personal information contained in the applications that BIA or landowners do not want to be disclosed and that is not necessary to proceed with the sale, such information can be redacted. The Community is preparing a formal request to Pima Agency to provide copies of the landowners' applications.

Proposed Solution: As discussed above, BIA needs to work as a partner with the Community and better understand the Community's long term goals, rather than presenting obstacles to the Community's land acquisition efforts. By spreading inaccurate information about the Community's ability to purchase interest in land, failing to keep the Community informed about landowner purchase applications, and by abruptly making changes in land acquisition policy at BIA, the BIA has impeded rather than assisted the Community's important land acquisition goals. As a specific matter, BIA could assist the Community by facilitating the preparation of market analyses in lieu of appraisals for purchase of fractionated interests in land, which worked well when the Community was an active participant in the ILCA program and would avoid the BIA appraisal delay issue. Unfortunately, the Community has made this request but has yet to receive a market analysis in lieu of an appraisal.

Conclusion

This testimony has attempted to provide the Committee with several examples of areas in which the Community has experienced shifting and overly bureaucratic policies of the BIA that have negatively affected the Community's economic development planning. We believe this story speaks more largely, however, to a breakdown in the trustee's relationship with tribes as BIA moves from helping to facilitate tribal initiatives to instead posing as an obstacle to tribal development objectives. The Community spends more personnel time in interaction with BIA, often confrontational, than it spends with any other entity with which it conducts business. Some proposed immediate solutions have been included above. However, longer term solutions must include providing tribes a larger and more active role in controlling their land base and providing for governmental approvals in use of tribal lands. We understand that it is no solution to simply complain about our relationship with BIA—that would be too easy. Instead, we look forward to working with Committee staff on a longer-term initiative to develop ideas to address these important issues, including the development of legislation and policies that facilitate the broader goal of sovereignty for tribes that keeps pace with tribal economic development goals and the competing development surrounding tribal lands.

Thank you, distinguished Members of the Committee, and we stand ready to answer any additional questions you may have about this testimony or to supply any additional information for the written record.

The CHAIRMAN. Governor Rhodes, thank you very much. Again, we appreciate your traveling to Washington, D.C. to provide the testimony.

Next, we will hear from Frank Bigelow, Supervisor of the Madera County Board of Supervisors, Madera, California.

Mr. Bigelow, thank you very much.

STATEMENT OF FRANK BIGELOW, SUPERVISOR, MADERA COUNTY BOARD OF SUPERVISORS

Mr. BIGELOW. Mr. Chairman, thank you very much. Ms. Vice Chairman, thank you very much also, and all distinguished members. I appreciate the opportunity to be here today to tell you how my community has been affected by the Department of Interior's

nine month delay in publishing a notice of availability of a draft environmental impact statement, better known as EIS, for tribal projects in my county.

My name is Frank Bigelow, as the Chairman said, and I have served on the Board of Supervisors for the past nine years. I am pleased to be here today with Jacquie Davis-Van Huss, Tribal Chairperson of the North Fork Rancheria. On behalf of the county, I have worked closely with Ms. Jacquie and other tribal officials in connection with the tribe's efforts to have land taken into trust for tribal economic development such as those Chairman Dorgan outlined earlier, as well as other opportunities, which does include a gaming facility just outside the City of Madera.

The County of Madera, the city and the Chambers of Commerce all strongly support this project. As you know, the taking of lands into trust for tribal economic growth is a major Federal action under NEPA. As such, the Department of Interior must comply with NEPA. As an elected official, I believe that a key aspect of NEPA is that the lead agency here, the Department of Interior, solicits and receives meaningful public input and comments on the proposed project in order for it to adequately assess the project's impacts on the environment.

The NEPA process allows impacted communities such as mine an opportunity to formally comment on a proposed project. Since the beginning stages of this project, we have been an active participant in the project. In fact, the City of Madera and the Madera Irrigation District are cooperating agencies for the EIS under NEPA.

We work closely with the tribe to ensure that all community concerns are addressed. The NEPA process facilitates the cooperation. We have benefitted from the process and we want it to continue. We have also invested time and resources in this process. However, the process has stopped and we do not know why.

Please, let me summarize the work that has gone into the preparation of the draft EIS for this project. Three years ago, the Bureau of Indian Affairs began preparing the draft EIS to examine the environmental impacts of the proposed project and various alternatives. The proposed project is located on a parcel which the tribe had earlier identified in cooperation with the county and community representatives. The county considers the location ideal from an environmental and economic and land use perspective, and thus in August, 2004 entered into a comprehensive MOU with the tribe to mitigate any possible impacts the project may have on the county.

Two months later, in October 2004, the BIA published a notice of intent to prepare an EIS for the project. The BIA then conducted a public hearing on the scoping process several weeks later, and eventually published the scoping report in July, 2005. We participated in those hearings and were satisfied with the scoping report.

The BIA then worked diligently to prepare and distribute numerous administrative drafts of the EIS. In March, 2006, the BIA sent an administrative draft EIS for review and comment to each of the five cooperating agencies, including the City of Madera, Madera Irrigation, two local jurisdictions, to determine that the administrative draft provided more than enough information to use as a basis for negotiating their own separate mitigation agreements with the

tribe. In October, 2006, the city entered into an MOU with the tribe, followed by the Madera Irrigation District two months later. This shows the ability of our community to recognize the need for this facility.

I understand that the draft EIS was completed on February 2, and that it was ready for distribution to the public. It is also my understanding that the draft EIS cannot be made public until there is a formal notice of availability of the draft EIS published in the Federal Register.

Unfortunately, the notice of availability has not yet been published, even though the draft was completed over nine months ago.

Let me stress that publication of the notice of availability in the Federal Register is not a decision on the merits of the tribe's project. It is simply a public notice of the draft EIS's availability for review and comment.

All levels of government have expended taxpayer money, Mr. Chairman, in this process for review, to allow the public to have an opportunity to review this project and comment on it. We are not getting that luxury afforded to us. We need that. We are asking. We are a community that is willing to embrace this opportunity. Please, as a Committee, review this process and give us some relief from the inaction from the BIA.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Bigelow follows:]

PREPARED STATEMENT OF FRANK BIGELOW, SUPERVISOR, MADERA COUNTY BOARD OF SUPERVISORS

Chairman Dorgan, distinguished members of the Committee, I appreciate the opportunity to be here today and to tell you how my community has been affected by the Department of the Interior's *9-month* delay in publishing a notice of availability of a draft environmental impact statement ("EIS") for a tribal project in my county.

My name is Frank Bigelow and I have served on the Madera County Board of Supervisors for the past 9 years. I am pleased to be here with Jacquie Davis-Van Huss, Tribal Chairperson of the North Fork Rancheria. On behalf of the County, I have worked closely with Jacquie and other tribal officials in connection with the Tribe's efforts to have land taken into trust for a tribal gaming facility just outside of the city of Madera. The County of Madera, the City, and the Chambers of Commerce all strongly support this project.

As you know, the taking of lands into trust for a tribal gaming facility, is a major Federal action under NEPA—the National Environmental Policy Act. As such, the Department of the Interior must comply with NEPA. As an elected County official, I believe that a key aspect of NEPA is that the lead agency—here the Department of the Interior—solicits and receives meaningful public input and comment on a proposed project in order for it to adequately assess the project's impact on the environment.

The NEPA process allows impacted communities, such as mine, an opportunity to formally comment on a proposed project. Since the beginning stages of this project, we have been an active participant in this project—in fact, the city of Madera and the Madera Irrigation District are cooperating agencies for the EIS under NEPA. We have worked closely with the Tribe to ensure that all community concerns are addressed. The NEPA process facilitates this cooperation. We have benefited from this process and we want it to continue. We have also invested time and resources in this process. However, the process has stopped and we do not know why.

Please let me summarize the work that has gone into the preparation of the draft EIS for this project.

Three years ago the Bureau of Indian Affairs began preparing the draft EIS to examine the environmental impacts of the proposed project and various alternatives. The proposed project is located on a parcel which the Tribe had earlier identified in cooperation with the County and community representatives. The County considers the location ideal from an environmental, economic, and land use perspective,

and thus, in August 2004, entered into a comprehensive Memorandum of Understanding with the Tribe to mitigate any possible impacts the project may have on the County.

Two months later, in October 2004, the BIA published a Notice of Intent to prepare an EIS for the project. The BIA then conducted a public hearing on the scoping process several weeks later, and eventually published the scoping report in July 2005. We participated in that hearing and were satisfied with the scoping report.

The BIA then worked diligently to prepare and distribute numerous administrative drafts of the EIS. In March 2006, the BIA sent an administrative draft EIS for review and comment to each of the five cooperating agencies, including the city of Madera and the Madera Irrigation District. These two local jurisdictions determined that the administrative draft provided more than enough information to use as a basis for negotiating their own separate mitigation agreements with the Tribe. In October 2006, the City entered into a Memorandum of Understanding with the Tribe, followed by the Madera Irrigation District 2 months later. Together with the County MOU, these agreements indicate the community's strong support for the project. At this point, every Chamber of Commerce, the city of Chowchilla, and nearly every community organization in the County has endorsed the project.

I understand that the draft EIS was completed on February 2nd and that it was ready for distribution to the public. It is also my understanding that the draft EIS cannot be made public until there is a formal "Notice of Availability of the Draft EIS" published in the Federal Register.

Unfortunately, the Notice of Availability has not yet been published, even though the draft was completed over *9 months* ago. BIA officials have told the Tribe that the draft EIS is in order and nothing further is required from the Tribe for its publication. However, and despite the fact that the Tribe has repeatedly met with BIA representatives, and local government and community leaders have gone so far as to enlist the support of our local Congressional representative, the delay continues without explanation.

Let me stress that publication of the Notice of Availability in the Federal Register is not a decision on the merits of the Tribe's project; it is simply a public notice of the draft EIS's availability for review and comment. It is two pages in length and, as required by the BIA NEPA Handbook, contains a brief description of the proposed action and alternatives, instructions to the public for submitting comments and attending a public hearing, and a closing date for the receipt of comments. In short, it is a small but critical step to allow continued input from the public—including my constituents.

All levels of government have expended taxpayer dollars in the preparation and review of the draft EIS. Further delay in publishing the draft EIS would be unfair to taxpayers, since the environmental studies in the draft EIS may eventually need to be updated, triggering additional review. It is also unfair to the Tribe and its more than 1,800 tribal citizens who continue to incur significant interest expenses with each passing month.

In closing, the County and city of Madera are excited about the Tribe's project and the development that it has already brought to our community. We are hopeful that the Committee's oversight will help end the current backlog so that the NEPA process can continue without further delay.

The CHAIRMAN. Mr. Bigelow, thank you very much. We appreciate your coming to our Committee today.

Next, we will hear from Mr. Doug Nash, the Director of Indian Estate Planning and Probating, Institute of Indian Estate Planning and Probate at Seattle University School of Law in Seattle, Washington.

STATEMENT OF DOUGLAS NASH, DIRECTOR, INSTITUTE FOR INDIAN ESTATE PLANNING AND PROBATE

Mr. NASH. Thank you, Mr. Chairman. Thank you for the opportunity to be here, Madam Chairman.

The Institute for Indian Estate Planning and Probate was established in August of 2005. We are a project of the Indian Land Tenure Foundation, a non-profit corporation headquartered in Little Canada, Minnesota. The institute develops and oversees estate planning projects, projects that provide estate planning services to

tribal members. We have projects in operation in seven States at this time. We utilize a variety of different models. Those include providing staff positions, attorneys, paralegals, specially trained law students working as externs and interns, and a clinical program there at Seattle University as well.

These services are provided to tribal members at no cost, and projects to date have provided approximately 2,400 estate planning documents, including wills, to tribal clients throughout the areas our project serves. Except for a pilot project funded by the Bureau of Indian Affairs, all of our projects are funded through private sources, foundations and non-profits. Consequently, the number of projects that we operate and the number of clients that can be served are limited. It is our hope that the authorization for appropriations as provided in the Probate Reform Act at some point will be activated and utilized for this purpose.

I wanted to touch briefly upon the benefits of estate planning services as a remedy or having an impact upon the backlog of probates and the issue of fractionation. Estate planning, effective and professional estate planning, does a number of things. First of all, it provides an opportunity to catch errors in land title records as wills and estate plans are being done for tribal member clients, and consequently it provides an opportunity to correct those mistakes.

In many instances, estate planning avoids probate entirely. Many times, clients wish to provide gift deeds or effect sales of their interests in trust property to tribes or other tribal members, or pursue consolidation applications, and in taking those approaches remove their estate from the probate process.

Wills also provide an opportunity to avoid fractionation, or further fractionation of interests in trust land. Since we have been tracking the statistics, we find that approximately 90 percent of the wills done have that effect. There are a number of devices by which that can be achieved, allowing a tribal member client to leave property to heirs as joint tenants with a right of survivorship, leaving entire parcels to individuals heirs, and so on.

Professionally done wills facilitate the probate process when wills are correctly and properly done. Wills can also avoid the fractionation that is actually caused by the Probate Reform Act, which happens when interests that are greater than five percent are less to pass intestate. It is our belief that the goals and purposes of the Probate Reform Act cannot be achieved unless there is professional estate planning services provided to tribal member clients throughout Indian Country.

We have an interesting opportunity in the State of Alaska, Madam Vice Chair, where there are first generation allotments, compared to allotments in the lower 48, many of which date back, as you know, for 100 plus years, and where fractionation is a very serious problem. That problem doesn't exist yet where those first generation allotments exist. We believe that would be a very unique opportunity to provide estate planning services in those situations and avoid there, I believe, the problem of fractionation that we see so rampant across reservations here in the lower 48.

I thank the Committee again for the opportunity to be here. We would be happy to provide any further information that we can on this issue.

[The prepared statement of Mr. Nash follows:]

PREPARED STATEMENT OF DOUGLAS NASH, DIRECTOR, INSTITUTE FOR INDIAN ESTATE PLANNING AND PROBATE

My name is Douglas Nash. I am the Director of the Institute for Indian Estate Planning and Probate which is a project of the Indian Land Tenure Foundation (ILTF), a non-profit foundation headquartered in Little Canada, Minnesota. The Institute is housed at Seattle University School of Law in Seattle, Washington. The Institute was created by the (ILTF) in 2005 in anticipation of the American Indian Probate Reform Act (AIPRA) taking effect in June, 2006.

I would like to address briefly three areas. First the work of the Institute; second, the impact of fractionation and probate backlogs as discovered through our work; third, suggestions for addressing the issues of fractionation and backlog.

I. The Institute:

The mission of the Institute is to assist Indian people in making informed decisions about their property by:

1. Establishing legal service projects that provide free and reduced cost estate planning and consolidation services to individual tribal members;
2. Providing training to tribal members, governmental officials and the legal community, and;
3. Serving as a clearinghouse for the latest information on the American Indian Probate Reform Act.

In addition, we have begun offering review of draft tribal probate codes that will be submitted for approval pursuant to the provisions of AIPRA.

1. Projects

Our projects are funded by the ILTF and other foundations and provide no cost estate planning services to tribal communities. Over the past 4 years, we have utilized a number of different and successful models designed to provide estate planning service and information on land consolidation, including will drafting, gift deeds, sales and durable powers of attorney. These models utilize different combinations of attorney, para-legal, and law student interns providing services to selected tribes in South Dakota, Washington, Oregon, Idaho, Montana, Minnesota, and Arizona. In FY 2006, we also managed a 1-year, one half million dollar pilot project funded by the Bureau of Indian Affairs. Among the stated purposes of that BIA project was to determine if estate planning services were needed in Indian Country and, if so, whether fractionation could be effectively addressed by estate planning. The results indicate an unequivocal yes to both questions. Under that project, estate planning services were provided on six reservations in Washington and Oregon as well as reservations in South Dakota. Copies of that final report will be provided to you.

Overall, the projects that we have developed and overseen have resulted in a total of 1,326 wills and 1,142 other estate planning documents being completed at no cost to Indian people. Insofar as I am aware, ours is the only program in the country that is seeking to provide estate planning services on a large scale in Indian Country. We develop programs as funds become available. However, our current projects do not even come close to meeting the need nation-wide and private funding for these services is very difficult to come by as it is viewed by private foundations as a government problem.

2. Training

We have held 2-day, national symposia in Seattle, WA, Rapid City, SD and Tempe, AZ in addition to responding to requests from tribes, organizations and state bar sections in Montana, Idaho, Nevada, South Dakota, Minnesota, Washington and California. We are currently planning national programs to be held in Minnesota, New Mexico and again in Seattle. For our symposia, we bring in a wide range of experts as presenters including Judges from the Office of Hearings and Appeals, Attorney Decision Makers, Bureau of Indian Affairs officials, personnel from the Office of the Special Trustee, Indian Land Consolidation Program, law school faculty, Tribal and private attorneys. We have heard the questions posed by hundreds of Indian land owners who have attended these sessions. We have the benefit of interacting with all of these individuals whose knowledge and information contributes to our knowledge of the probate process.

More Information on the Institute is available at *www.indianwills.org*.

II. Fractionation of Land and Probate Backlog

With that background, I'd like to offer some observations and thoughts about the backlog in Indian probate cases.

Fractionation of trust allotments is a fact and one that has been recognized as an exponential problem in many governmental studies including the 1928 Meriam Report.[1] Examples and figures abound. With the focus on fractionation, it should also be noted, however, that not every parcel of trust land is highly fractionated and if highly fractionated, can still have substantial economic value.

In many locations where the allotment process was late in being applied to reservations, or individual owners were tenacious in land protection, large interests including 100 percent ownerships, are found. In many instances, an interest less than 5 percent of the total parcel will have minimal economic value. However, 5 percent of a 160 acre parcel of land is 8 acres which could well be suitable for many uses. Likewise, an interest that is less than 5 percent of a parcel situated in a municipal setting in southern California or which overlays valuable oil or mineral deposits, has substantial economic value. Additionally, even small interests in an original allotment can have historic, cultural, familial and personal values to an individual owner that are far more important than any economic consideration.

Fractionation is a significant factor in the probate backlog, as each interest, however minute, requires accurate title records from the inception of decedent's probate package, distribution at probate and entry of new title transfers to heirs.

The probate process requires the involvement of three different entities-the Bureau of Indian Affairs, the Office of Special Trustee and the Office of Hearings and Appeals. There are delays that apparently stem from each agency and the need for additional personnel and resources is often raised as a potential to the backlog problem. It appears that all agencies are making significant progress on the existing backlog. OHA is doing so with a small number of judges especially compared to the number of probate, realty, and contract personnel involved at the BIA and tribal end of the process. In light of the existing caseload and the future impacts of AIPRA allowing for purchase options and consolidations during probate which will further slow the process, increases in the number of judges should be considered.

There are other complicating factors that need to be addressed as well.

1. Trust Land Ownership Records

The BIA has the responsibility of preparing a probate file as the first step in the probate process. This involves the gathering of all relevant information about the decedent including records of trust land ownership. Those records are currently maintained at different agencies and in several Land Title Record Offices around the country that maintain records for different regions. The number of fractionated interests complicates the ownership record keeping process by sheer numbers and the fact that one individual may well own interests that are recorded in more than one LTRO. Changes in ownership are not necessarily recorded at a uniform pace and a probate file may be sent forward that does not include all of the interests owned by a decedent at the time of death, making the probate inaccurate and necessitating additional probate proceedings and a modification of a final probate order. When a final probate order is issued, that order is sent to back to the BIA where changes in title ownership—from the decedent to heirs—is to be recorded. Because those orders may have to be interpreted and recorded by several different LTROs, there may be differences in the interpretation process.

There are errors in the land title records. I know from personal experience that there are inconsistencies between records in the TAAMS and TFAS systems. To achieve consistency in policy and interpretation, increased accuracy and timely recordation of changes in ownership, having central land ownership records accessible nationally with well defined procedures would be a positive step.

Outdated ownership records and data bases create a new probate backlog as they are corrected, increasing the work for the BIA and OHA. As title records are corrected, new heirs are found requiring case openings, often with one or more heirs deceased resulting in reopening and modifications to closed probate cases. Many of these old cases predate the Protrac system, which means the data must be entered by BIA before OHA can begin probates.

Finally, under AIPRA, measurements of fractionated interests will be used determine consent requirements for sales at probate, partitions and also the application the intestate "single heir" rule. This is significant. Accurate and up-to-date title

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[1] Lewis Meriam et al., *The Problem of Indian Administration: Report of a Survey Made at the Request of Hon. Hubert Work, Sec. of the Int.* (Feb. 21, 1928) (John Hopkins Press, 1928) availble at *http://www.alaskool.org/native_ed/research_reports/IndianAdmin/Indian_Admin_Problms.html*.

records are essential to avoid the misapplication and taking of interests without consent. As historically evidenced by Youpee, the return of fractionated lands to rightful heirs is an costly and onerous process that is difficult to achieve.

2. Probate Files

Probate begins only when a death is reported to the BIA and that reporting is dependent upon members of the family or community. That may not happen for a long time after the death actually occurs. For example, the death of a person who is not married and who has no descendents may not be reported as promptly as that of an individual who has a large family. Presumption of death cases require additional work and a higher level of expertise that the typical probate cases as OHA must make determinations that an individual is presumed to be deceased. One recommendation is to allow BIA and OHA to use OST investigators in developing and adjudicating these cases. The failure to have a death reported or death presumption cases may well result in further errors in the probate of related estates resulting in additional case reopening and modifications.

It is our understanding that the BIA has initiated a quota system for the preparation of probate files in an attempt to increase the number of files sent forward to OHA for probate. This has resulted in a significant reduction in the backlog reported. However, in many instances, this has increased the number of files sent forward incomplete requiring the files to be sent back to the BIA or the OHA must attempt to finish compiling the necessary information. It is not known how returned files are reported in the backlog process.

In these kind of situations, OHA judges are often placed in the position of having to do work on probate files to make them complete. They do not have investigators or staff to perform that function. The ILTF and the Institute have discussed the prospect of developing a model intern/extern program to work with OHA judges and which could address that need. While such a program could be developed and, we believe, initial private funding could be obtained, it ultimately would require Federal funding to support and continue it.

3. Planning and Coordination

Because the Indian probate system depends upon separate agencies and several different offices within those agencies, there is clearly a need for integrated data sharing and coordination between all involved.

4. Impact of AIPRA on the Probate Process

The full impact of AIPRA on the probate process is yet to be seen. That impact will not be fully seen until most or all of the cases before OHA are those where the decedent passed away after June 20, 2006, and thus are subject to the provisions of AIPRA. However, it is expected that the need to address consolidation agreements and purchase options as part of the probate process will result in some cases taking more time to close.

III. Solutions

Tools to reduce, and ultimately eliminate fractionation, already exist. Those tools include: (1) The American Indian Probate Reform Act, (2) Estate Planning services for Indian Country and, (3) The Indian Land Consolidation Program. Recommendations for improvements are mentioned throughout this testimony.

1. The American Indian Probate Reform Act

AIPRA contains a multitude of mechanisms that can be used by the Secretary, tribes and individuals to consolidate interests in trust allotments. Examples include tribal land consolidation plans, consolidation agreements, fractional interest acquisition program, purchase options at probate, renunciation and partitioning that reconsolidates all interest in one owner. Other mechanisms such as the single heir rule and testamentary presumption of joint tenant with right of survivor will serve to avoid further fractionation of small interests in trust lands. Given sufficient time, the Act will have the intended result of reducing fractionation through consolidation of interests.

2. Estate Planning

Estate planning is an important and unrecognized tool for reducing fractionation and probate cases, reconsolidating land interests, and furthering an individual's ability to voluntarily manage their own lands. Additionally, estate planning diminishes the number of land interests entering the probate stream through inter-vivos

transfers including sales, consolidation applications and gift deeds.[2] Another important benefit, estate planning allows title records to be corrected or updated when discrepancies are found while the owner is alive as each client has an updated title report reviewed in the estate planning process.

The Institute's projects provide community education to landowners and client counseling, successfully highlighting consolidation options with a will and lifetime transfers. The result—only 8 percent of wills drafted further fractionate lands; and gift deeds, sales and consolidation agreements transfer the lands during life avoiding the probate process entirely. Because AIPRA's intestacy rules distribute interests 5 percent or greater to all eligible heirs as tenants in common, further fractionating ownership interests, estate planning provides greater tools for protection against fractionation than AIPRA itself.

AIPRA is highly complex with provisions coordinated with other Federal acts and codes. The Act, combined with the withdrawal of BIA will drafting services, has created a huge void of specially trained professionals to provide estate planning for Indian people. The need for trained professionals has been voiced to us from every quarter. It is our estimation that there are currently less than 100 legal professionals currently trained nationally. We have already seen the results of will drafting being done by attorneys who are unaware of AIPRA and its ramifications for their clients. This poses a potentially disastrous result for the Indian client in terms of their estate plans and desires. It also poses a potentially disastrous professional liability for the attorney who performed the work.

While our projects have had a beneficial effect, the tribal communities served are very limited. The pursuit of private funds to support this work has been met with very limited success, as the work is often viewed as a governmental responsibility. AIPRA contains an authorization for appropriations for estate planning work in Indian Country. An appropriation of funds sufficient to deliver these services throughout Indian Country would significantly advance the effort to reduce, and eventually eliminate fractionation. AIPRA's goals will fail unless funding for professional estate planning services is provided.

3. Indian Land Consolidation Program

The ILCO program, established in April 2003 as a pilot program on a limited number of reservations, has a demonstrated remarkable record of success in eliminating fractional interests, purchasing 359,723 interests for tribes and precluding them from ever reaching probate. The mechanics of the program need not be reviewed here. The program has broad support for three primary reasons—first, trust interests are purchased on a willing seller basis; second, purchase are made at fair market value and; third, the interests purchased are consolidated into tribal ownership. Given the very significant results achieved by this program it is amazing that funding for it has been significantly reduced for FY 2008, to a level that will not allow it to reduce the number of fractionated interests but only maintain the status quo against the ever increasing numbers of fractionated interests coming into existence. This is especially amazing since the purchase price is ultimately repaid by revenue generated from the acquired interest. The program currently operates on only eight reservations, all located in the Midwest. The Indian Land Consolidation Program has proven itself to be a highly effective tool in the elimination of fractionated interests with the benefit of affecting consolidation of those interests in tribal ownership. The program should be expanded to other reservations and should be funded at a substantially increased rate.

A news article some time ago noted that there was no quick fix for Indian probate problems and that remains true with regard to the backlog of cases. Fractionation and the attendant problems that flow from it began with the allotment process 130 years ago. AIPRA, estate planning services and the Indian Land Consolidation Program will ultimately resolve the fractionation problem or reduce it to an insignificant level. The elimination of fractionation will go far in reducing the complications in the probate process that feeds the backlog seen now.

4. Revised Process Recommendation

Arvel Hale, former Chief Appraiser for the BIA who now works as a consultant on appraisal and systems issues, has a suggestion for reducing the time required to prepare probate documents. He proposes developing a system that will:

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[2] Under AIPRA, a person may devise in a will a trust interest to anyone defined as an "eligible heir." However, a person cannot make an inter-vivos conveyance in trust to some of those same individuals. The result is that some individuals are forced to wait until death and probate to achieve what they might otherwise wish to do while alive. The purpose and intent of AIPRA would be furthered by simple legislation authorizing the inter-vivos conveyance of interests in trust land, in trust, to all persons defined as "eligible heirs" under AIPRA.

(1) Retrieve the ownership data from the Land Records System (TAAMS).

(2) Retrieve money amounts from the IIM accounts.

(3) Retrieve names and addresses of the heirs from the enrollment system.

(4) Prepare property value estimates using a Mass Appraisal Model that utilized inventory data from the trust land management system.

(5) Calculate the entitlements from the probate to be conveyed to the heirs.

(6) Electronically compile and print data in report formats that would be helpful to the Probate Judges.

(7) As Probate Judges rule on the cases the land records could be automatically updated from the information in the probate system.

He has advised that this system would require links to existing BIA and OST data bases so that data can be efficiently passed between them and the probate system. The technicalities involved in developing this kind of system are far beyond my understanding, but I would be happy to assist in exploring the prospect further with Mr. Hale should that be of interest to the Committee.

5. Alaska—A Unique Opportunity

Alaska presents a unique opportunity in terms of Indian estate planning. Whether one agrees with the allotment process, there are first generations allotments in Alaska. This presents an opportunity to avoid the fractionation crisis and to demonstrate that fractionation can be avoided by estate planning.

IV. Conclusion

I would like to thank this Committee for allowing me the opportunity to appear and offer testimony on this important issue. I would like to especially thank this Committee for its interest in the Indian Probate Process and in making it work for the benefit of Indian people, tribes and communities.

If we can provide any further information or respond to any questions, we would be happy to do so.

The CHAIRMAN. Mr. Nash, thank you very much for your testimony today.

Next, we will hear from Mr. Robert Chicks, Vice President, National Congress of American Indians, Midwest Region; President of the Stockbridge Munsee Band of Mohican Indians; Co-Chair of the NCAI Land Recovery Task Force; President of the Midwest Alliance of Sovereign Tribes; President of the Great Lakes Intertribal Council.

Mr. Chicks, do you have any other titles that I might have missed here?

[Laughter.]

The CHAIRMAN. You are a very busy man, and we thank you very much for bringing your testimony to the Committee today.

STATEMENT OF ROBERT CHICKS, VICE PRESIDENT, NATIONAL CONGRESS OF AMERICAN INDIANS (NCAI), MIDWEST REGION; PRESIDENT, STOCKBRIDGE MUNSEE BAND OF MOHICAN INDIANS; ACCOMPANIED BY JOHN DOSSETT, GENERAL COUNSEL, NCAI

Mr. CHICKS. Thank you, Mr. Chairman. Thank you for the invitation.

I testify to you on behalf of the National Congress of American Indians and our member tribes. We have grown increasingly concerned about the backlog of realty functions at the Bureau of Indian Affairs and the negative impacts on our efforts to develop economic activity on our reservations, as well as the impact on housing, our culture and our services, and land consolidation. We hope to offer some suggestions on how Congress and the Department of Interior can address these growing problems.

First, I believe it is important for Congress to recognize that land management should be the BIA's core mission and priority, to protect and restore the permanent homelands where tribal communities live and govern our own affairs.

Second, the various backlogs are not independent problems, but are related parts of the same Bureau of Land Management system. I have included in my testimony a simple diagram of the Bureau trust business cycle. This chart shows how most economic transactions work in Indian Country, starting with land and ownership, moving to land leasing and sales of natural resources, and then accounting and distribution of the trust funds back to the landowners. Backlogs in one area create a bottleneck that causes multiple delays across the entire system.

Third, over the last 10 years, a great deal of attention has been paid to trust accounting because of the litigation over Indian trust funds. However, the basic Bureau land functions of title, leasing, acquisitions and probate are even more critical to Indian communities because these functions drive economic development. Business transactions from routine home mortgages to timber sales to large commercial deals require predictability and timeliness that is lacking from the Bureau system.

The causes of these backlogs are complex and rooted in the history where the Bureau has mismanaged tribal lands due to inadequate resources and a lack of oversight and accountability. These historic problems have been compounded in recent years by several factors, including the Fiscal Year 1996 budget cuts for Bureau programs were implemented primarily by laying off realty workers in the field offices. The realty budget has never recovered from these cuts.

The level of fractionation has increased dramatically, causing backlogs in probate and title that create delays in other parts of the land management system. In response to the trust fund litigation, available resources have been shifted to the Office of Special Trustee, which has grown to $150 million annual budget with resources largely taken from the Bureau realty offices. The litigation has also cut off e-mail and internet access, which eliminates the efficiency of current communication technologies. Indian tribes are increasing our economic activities, creating an increase in commercial leasing, land transactions and the need for appraisals.

I want to mention several solutions for these backlogs that have garnered wide support from tribal leaders. Number one, all of these factors have combined to create backlogs in Bureau realty that will not change until Congress puts more financial resources into these functions. In addition, Bureau realty needs process and system improvements, recruitment and training programs for employees, and leadership to develop and implement a plan for business operations and trust management.

Second, Congress should also revisit Title III of last year's S. 1439 bill which would increase tribal control over reservation land management. Indian reservations vary widely in their needs for land management services. Tribes would be able to create reservation-specific land management plans and allocate the available funding according to the needs of that particular reservation. They would have the option to take over specific functions. Under these

plans, tribes would also be authorized under certain types of leases, without the involvement of the department.

Three, Congress should also revisit Title IV of last year's S. 1439 bill which would amend the Indian Land Consolidation Act to streamline land acquisition procedures and create incentives for sales of fractionated interests.

And four, Congress should work with tribes in the development of other innovative solutions. Lending in Indian Country is often a problem, and some tribes are developing ideas about lending intermediaries who can become familiar with securing loans into the Bureau trust system.

Finally, I want to particularly mention one of the backlogs that has is of great importance to tribes. As this Committee knows, between the years 1887 and 1934, the U.S. Government took more than 90 million acres from the tribes, nearly two thirds of all our reservation lands, and sold it to settlers and corporations.

The Secretary of Interior was given the responsibility under the Indian Reorganization Act to reacquire land for Indian tribes and restore the damage caused by earlier congressional policies. As noted by one of the IRA's principal authors, Congressman Howard of Nebraska, he said, "The land was theirs under titles guaranteed by treaties and law, and when the government of the United States set up a land policy which, in effect, became a form of legalized misappropriation of the Indian estate, the government became morally responsible for the damage that has resulted to the Indians from its faithless guardianship."

The vast majority of trust land acquisitions take place in rural areas within the boundaries of existing reservations, and are not controversial in any way. Trust land acquisition is necessary for the consolidation of fractionated and allotted Indian lands, and often is needed for essential purposes such as Indian housing, health care clinics, and land for Indian schools.

Our perception has been that land-to-trust applications are delayed because they are discretionary functions in officers that are understaffed and overloaded with mandatory trust functions. Even though land-to-trust applications are a very high priority for the tribes and for the fundamental mission of the Bureau, they are given a lower priority because they do not come with deadlines attached to them.

The backlog of decision making in Bureau realty has been a leading concern of tribal leaders throughout the Country for many years, and the National Congress of American Indians strongly encourages Congress and the Administration to take action on these issues in close consultation with the tribal leadership.

Thank you.

[The prepared statement of Mr. Chicks follows:]

PREPARED STATEMENT OF ROBERT CHICKS, VICE PRESIDENT, NATIONAL CONGRESS OF AMERICAN INDIANS (NCAI), MIDWEST REGION; PRESIDENT, STOCKBRIDGE MUNSEE BAND OF MOHICAN INDIANS

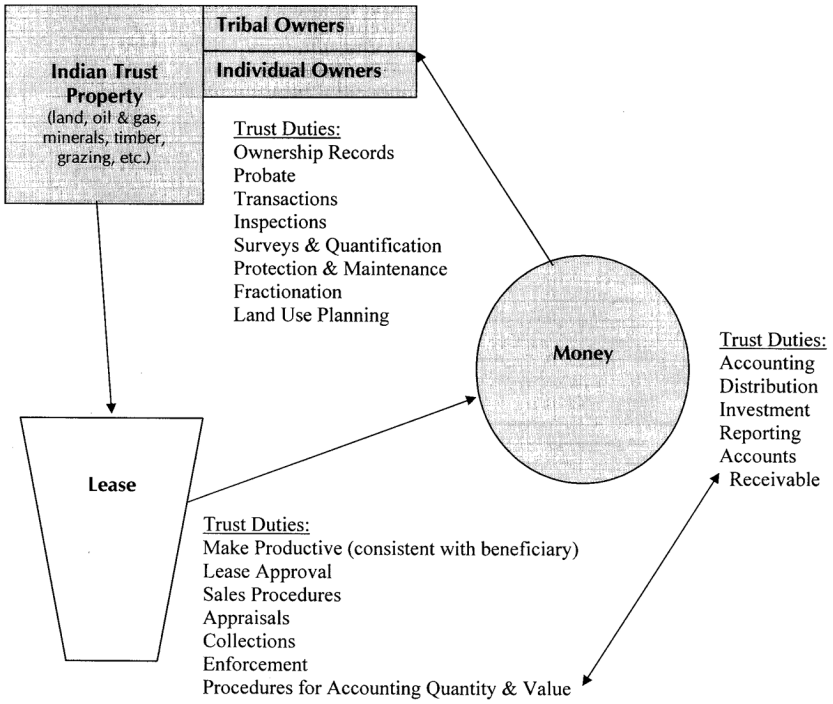
Honorable Chairman and members of the Committee, thank you for the opportunity to testify today. This is a very timely and important topic. The National Congress of American Indians and its member tribes have grown increasingly concerned about the backlog of realty functions at the Bureau of Indian Affairs, and the negative impacts on our efforts to develop economic activity on the reservations. In our

testimony, we hope to shed light on the context of these various backlogs, and offer constructive suggestions on how Congress and the Department of Interior can make improvements.

First, I believe it is important for Congress to recognize that the Bureau of Indian Affairs is primarily a land management agency. It is a specialized type of land management, with the responsibility of holding 56 million acres of Indian lands in trust and managing them as a permanent homeland where Indian tribal communities live and govern their own affairs. Of course the BIA has other functions such as law enforcement and education, but these activities are a part of the primary responsibility of protecting and managing tribal homelands. Land management should be the BIA's core mission and priority.

Second, the various backlogs that the Committee has identified are not independent problems, but are interrelated parts of the same BIA land management system. I have attached to my testimony a simplified diagram of the BIA trust business cycle. This chart shows how most economic transactions work in Indian country—starting with land and ownership, moving to land leasing and sales of natural resources, and then accounting and distribution of trust funds back to the land owners. Backlogs in one area affect the entire system. For example, in order to execute a lease, the BIA must have an accurate title status report and a current appraisal and may need a survey and an environmental review. In order to get a title status report, the BIA may have to update the title with the results of probate decisions. A bottleneck at one step in the process causes multiple delays across the entire system.

Third, over the last 10 years, a great deal of attention has been paid to the accounting part of the trust business cycle because of the litigation over Indian trust funds. However, in the big picture the basic BIA land functions of title, leasing, acquisitions and probate are even more critical to Indian communities because these functions drive economic development. Business transactions—from routine home mortgages to timber sales to large commercial deals—require a degree of predictability and timeliness that is lacking from the BIA system. Tribal leaders want to fix the BIA land system and we hope to work closely with the Committee and the Department in developing solutions.



Crosscutting Duties:

Tribal Self-Determination	Strategic Planning
Treaties, Laws, Cases	Policies and Procedures
Funding	Establishing Account Balances
Training	Security & Privacy of Information
Internal Controls	Systems Architecture
External Audits and Monitoring	Beneficiary Focus
Errors and Omissions	Performance Measures

Causes and Solutions of BIA Realty Backlogs

Trust problems at the BIA are rooted in our country's history. In a push to acquire tribal land, the Federal Government imposed reservation allotment programs pursuant to the General Allotment Act of 1887. Under these policies, tribes lost 90 million acres and much of the remaining 56 million acres was opened to non-Indian use through leasing and sales. It is widely documented that the BIA has historically mismanaged tribal lands due to inadequate resources and a lack of oversight and accountability.[1] The historic problems have been compounded in recent years by several factors:

- The FY 1996 budget cuts for BIA programs were implemented primarily by laying off realty workers in the field offices. The realty budget has never recovered from these cuts.
- The level of fractionation has increased dramatically, causing backlogs in probate and title that create delays in other parts of the land management system. Fractionation is also creating mounting costs in both management and losses in land productivity.

[1] See Misplaced Trust: The Bureau of Indian Affairs' Mismanagement of the Indian Trust Fund, H.R. Rep. No. 499, 102d Cong., 2ND Sess. 1992, 1992 WL 83494 (Leg.Hist.), and, Financial Management: BIA's Tribal Trust Fund Account Reconciliation Results (Letter Report, 05/03/96, GAO/AIMD–96–63).

- In response to the *Cobell* litigation for a trust funds accounting, available resources have been shifted to the Office of Special Trustee, which has grown to a $150 million annual budget with resources largely taken from BIA realty. The litigation has also cut off e-mail and internet access, which eliminates the efficiency of current communication technologies.
- Indian tribes have increased their economic activities, creating an increase in commercial leasing, land transactions and the need for appraisals.

Potential solutions include:

1) All of these factors have combined to create backlogs in BIA realty that will not change until Congress puts more financial resources into those offices at the local level. In addition, BIA realty needs process and system improvements; recruitment and training programs for employees; and leadership to develop and implement a plan for business operations in trust management.

2) Congress should also revisit Title III of last year's S. 1439, which would increase tribal control over reservation land management. Indian reservations vary widely in their needs for land management services. Indian tribes would be able to create reservation-specific land management plans to establish objectives and priorities, and allocate the available funding according to the needs of that particular reservation. Both direct service and self-governance tribes are eligible to use the plans. Under these plans, tribes would be authorized to enter certain types of leases for up to 25 year terms without the involvement of the Department.

3) Congress should also revisit Title IV of last year's S. 1439, which would amend the Indian Land Consolidation Act to streamline land acquisition procedures and create incentives for sales of fractionated interests.

Land to Trust Acquisitions

As mentioned above, between the years of 1887 and 1934, the U.S. Government took more than 90 million acres from the tribes, nearly two-thirds of all reservation lands, and sold it to settlers and corporations. The principal goal of the Indian Reorganization Act of 1934 was to halt and reverse the abrupt decline in the economic, cultural, governmental and social well-being of Indian tribes caused by the disastrous Federal policy of allotment and sale of reservation lands. The IRA is comprehensive legislation for the benefit of tribes that stops the allotment of tribal lands, continues the Federal trust ownership of tribal lands in perpetuity, encourages economic development, and provides a framework for the reestablishment of tribal government institutions on their own lands.

Section 5 of the IRA, 25 U.S.C. 465, provides for the recovery of the tribal land base and authorizes the Secretary of Interior to acquire land in trust status for the benefit of Indian tribes to assist in meeting the broad goals of the Act. As noted by one of the IRA's principal authors, Congressman Howard of Nebraska, "the land was theirs under titles guaranteed by treaties and law; and when the government of the United States set up a land policy which, in effect, became a forum of legalized misappropriation of the Indian estate, the government became morally responsible for the damage that has resulted to the Indians from its faithless guardianship," and said the purpose of the IRA was "to buildup Indian land holdings until there is sufficient land for all Indians who will beneficially use it." (78 Cong. Rec. 11727–11728, 1934.)

Of the 90 million acres of tribal land lost through the allotment process, only about 8 percent has been reacquired in trust status since the IRA—and most of that was the "ceded but unallotted lands" returned immediately after the IRA. Still today, a number of tribes have no land base and many tribes have insufficient lands to support housing and self-government. Most tribal lands will not readily support economic development. A fundamental purpose of the IRA in promoting land acquisition was to address the problem of scattered and fractionated parcels which often rendered the tribal land base essentially unusable from a practical standpoint. And the legacy of the allotment policy, which has deeply fractionated heirship of trust lands, means that for many tribes, far more Indian land passes out of trust than into trust each year. Section 5 clearly imposes a continuing active duty on the Secretary of Interior, as the trustee for Indian tribes, to take land into trust for the benefit of tribes until our needs for self-support and self-determination are met.

Despite this important purpose, land to trust applications often languish at the Department of Interior. It is a chief concern of many tribes with the existing land to trust process. Too often tribes have spent precious time and scarce resources to prepare a trust application only to have it sit for years or even decades without a response. Such inordinate delay on trust applications often amounts to an unfair *de facto* denial of the request. In addition, during inordinate delays tribes risk losing

funding and support for the projects that they have planned for the land, and environmental review documents grow stale.

Our perception has been that most often land to trust applications languish because they are discretionary functions in offices that are understaffed and overloaded with mandatory trust functions. Even though land to trust applications are a very high priority for the tribes and for the fundamental mission of the Bureau of Indian Affairs, they are given a lower priority because they do not come with deadlines attached to them.

Tribal leaders have encouraged the BIA to establish internal timelines and checklists so that tribes will have a clear idea of when a decision on their application will be rendered. Tribes should know if progress is being made at all, and, if not, why not. Although we understand that the BIA is understaffed and that certain requests pose problems that cannot be resolved quickly, allowing applications to remain unresolved for years is unacceptable. The issue evokes much frustration over pending applications and has been raised at nearly every NCAI meeting.

Tribal leaders' frustrations are heightened because the vast majority of trust land acquisitions take place in extremely rural areas and are not controversial in any way. Most acquisitions involve home sites of 30 acres or less within reservation boundaries. Trust land acquisition is also necessary for consolidation of fractionated and allotted Indian lands, which most often are grazing, forestry or agricultural lands. Other typical acquisitions include land for Indian housing, health care clinics that serve both Indian and non-Indian communities, and land for Indian schools.

NCAI continues to urge the BIA to establish internal timelines for land to trust applications, which would include a provision for unusual and problematic cases. We believe these timeframes would balance the need for timely action from the BIA without burdening its staff or creating unrealistic expectations for the tribes. While decisionmakers must have adequate time, this must be balanced against the reality that all work expands to fill up the amount of time allotted to it. Establishing reasonable timelines is the only way to meet the tribes main goals—creating accountability in the process, and providing tribes with an estimated timeframe in which their applications will be processed.

Environmental Review

One of the more burdensome requirements for many land transactions such as leases and acquisitions is the requirement that the application undergo an environmental review under the National Environmental Policy Act (NEPA). The Bureau of Indian Affairs does not have an adequate budget to perform environmental analysis, so these costs are most often pushed onto the Indian tribes who are seeking to develop a project on their own lands. Even when these are environmentally beneficial projects such as a sewage treatment plant, the BIA, and thus the tribes, must comply with NEPA.

On this issue, we encourage the Congress to increase the resources to the BIA for compliance with NEPA, which can be a particularly difficult burden for tribes with fewer resources and larger land bases. In addition, we believe that it is appropriate for Congress to consider relieving tribes of some of the burdens of NEPA when tribes are developing publicly beneficial projects such as schools and clinics and other important community infrastructure. We do not believe that NEPA was ever intended to be a barrier to needed development of tribal lands by tribal governments where there is no real Federal action other than a pro forma land transaction approval.

Finally, we recommend that the Department consider utilizing a categorical exclusion in its Departmental Manual for land transactions that do not involve a change in use. The BIA has a categorical exclusion for "Approvals or other grants of conveyances and other transfers of interests in land where no change in land use is planned." 516 Departmental Manual 10.5.I. This categorical exclusion can and should be extended to conveyances where no change in land use is planned. Many tribes wish to take undeveloped land into trust for cultural or natural resource protection, and would manage such lands to fulfill those goals. In such cases, no change or environmental detriment to the land would occur. As a result, it makes good policy sense for transfers of such lands to benefit from the same categorical exclusion as other transfers of interests in lands which will have no adverse environmental impacts.

As the Department has recognized, conservation and cultural resources protection are important goals for many tribes seeking to take land into trust. Providing tribes with a categorical exclusion from NEPA review in such cases will remove a burdensome and unnecessary transactional cost, and help many tribes achieve those important goals. Such a mechanism would be of particular assistance to those tribes with fewer resources and larger land bases in need of protection.

Conclusion

NCAI and all tribal leaders strongly support fixing the trust land management system and we want to work constructively with the Department and with Congress to ensure sound management of tribal assets. The backlog of decisionmaking in BIA realty has been a leading concern of tribal leaders throughout the country for many years. NCAI strongly encourages Congress and the Administration to take action on all of the fronts that we have identified above, in close consultation and cooperation with tribal leadership. This effort will bring great benefits to Indian communities and our neighbors in productivity, economic development, and the wellbeing of our people. We thank you in advance, and look forward to starting our joint efforts immediately.

The CHAIRMAN. Mr. Chicks, thank you very much.

We have been joined by the Vice Chairman of the Committee, Senator Murkowski.

Senator Murkowski, did you wish to say anything before you ask questions, or in terms of an opening statement?

Senator MURKOWSKI. No, Mr. Chairman. I will include or incorporate in my questions any opening comments that I might have had. Thank you.

The CHAIRMAN. A few questions. For example, Mr. Bigelow, you describe what the county has gone through. You describe a delay in publishing the notice for the draft environmental impact statement. I can tell from your testimony how frustrating it is in terms of time. Tell me what you have done to reach out to try to figure out what is happening inside the system, inside the BIA. Have you contacted the Bureau of Indian Affairs or the Department of the Interior about status? What are you learning?

Mr. BIGELOW. We have, Mr. Chairman. We have made numerous attempts to contact either directly through the BIA or through our congressional representation, asking questions as to how we can better assist the BIA in accomplishing moving this project forward. It is a simple project. It is relatively benign if you look at the process of just allowing a two page report. It explains how the public process would work to go forward. Yet something so simple isn't occurring. We are perplexed or curious, maybe I should put. My own position there is why we are not seeing the due process occur.

The CHAIRMAN. What are you learning? When you call and ask, you are talking to different levels. What are you told?

Mr. BIGELOW. We are told that the BIA is in charge of this and they will get back to us, and they will address this. We are basically stonewalled, sir.

The CHAIRMAN. So does anybody get back to you?

Mr. BIGELOW. No, sir.

The CHAIRMAN. Okay.

Mr. Rhodes, you have this building. If we could have somebody put the picture of the building back up. I am trying to understand the circumstances. I guess it is pointed a different way at this point.

When I did a listening session on the Gila Indian Reservation, I think it was in February of this year, I saw that building. That building has been completed for how long, Governor?

Mr. RHODES. Just a little over a year, at a cost of about $7 million.

The CHAIRMAN. And you expected as you constructed that building to be able to lease the building?

Mr. RHODES. Yes.

The CHAIRMAN. When were you told in this process, no, you can't lease it until there is a master lease signed by the BIA?

Mr. RHODES. It has been over a year back.

The CHAIRMAN. And so I assume the tribe had some sort of apoplectic seizure learning that you have built a wonderful new building and can't lease it until somebody signs something at the BIA. Is that right?

Mr. RHODES. That is true. Yes.

The CHAIRMAN. And what did you expect? Did you expect in a month or two or six or nine months that somebody would probably pay attention to this?

Mr. RHODES. Well, at the rate the BIA has been responding, we hoped it would be 60 to 90 days, but we are still waiting.

The CHAIRMAN. So it has been over a year that this building sits empty. What are you hearing now from the BIA?

Mr. RHODES. Well, we did have a meeting with the Secretary. We do believe that he is going to do something to help us, we had the feeling after the meeting.

The CHAIRMAN. When did you have the meeting?

Mr. RHODES. I believe it was two months ago, about a month or two ago.

The CHAIRMAN. Well, I use this photograph just because I have seen the building. This is the sort of thing I don't understand. I would say to Assistant Secretary Artman, you know, I don't have the foggiest idea how this happens or why we don't take steps immediately to correct it.

I am not suggesting, from the Committee standpoint, that you must approve or disapprove something. I am saying you must make decisions on things. Somebody has to make decisions. I am not surprised that this falls through the cracks, if you don't even have a system that determines how many applications or how many processes you have going on. It is just staggering to me that in the age of computers, when we are talking in the thousands, not millions or hundreds of millions, that we don't have a system that keeps track of all of these things, number one. And number two, that we don't have uniform guidelines in the various regions or procedures in the various regions to follow.

So Mr. Artman, do you understand the frustration the Governor is speaking of? And the frustration I and others have about this?

Mr. ARTMAN. Mr. Chairman, I not only understand the frustration, but I have felt similar frustration myself when working for my own tribe. This is certainly something that we want to help with. As I mentioned to you before, we will be, and not just this particular thing, but the entire overall issue.

The CHAIRMAN. But this issue is not an issue of taking land into trust. This is simply a lease. Apparently, there needs to be a master lease approved by the BIA. So this is not a process where you need to move land into trust. Somebody has been waiting here for a year for the BIA to have a little breakfast, go to work, and do some work, and take a look at real things and say, all right, here, yes or no.

So I tell you what. I don't understand it and I am very disappointed in the people that work for the BIA if they are not able

to do their job. If you don't have uniform procedures and guidelines on how to do things, I understand why it is not done well. But I think the Congress and the American people, certainly the tribes and this Committee expect better.

So Mr. Chairman His Horse Is Thunder, you described it on the individual level. You described your mother's situation, and I assume you have the same frustration of just not knowing when this paper goes into this abyss, when someone might or might not decide that they will take some action one way or the other.

Mr. HIS HORSE IS THUNDER. We are really concerned because a number of those applications for the tribe's fee-to-trust have been in the application process since 1992. That is a long time. And we are getting mixed signals from the Bureau at the national level. When Mr. Artman took office, he assured us he would take a look at the process and they were going to start processing applications. A few months later at a national conference, I believe, and I may be corrected on this, Mr. Ragsdale publicly said, "We are not taking any applications; we are not processing any of the applications for fee-to-trust." So we have been getting mixed signals from the national office. So we are concerned about this.

The CHAIRMAN. Let me ask, Mr. Artman, if you would do me a favor just on this issue. Would you track down in your agency for me, just so that I might understand, when did this tribe file the required papers on this building? Who did it go to in the BIA? How long has it been sitting on whose desk? Why a year later has presumably nothing been done? Can we try to figure out who is exhibiting this Parkinson's law, a body at rest stays at rest?

Mr. ARTMAN. We can certainly do that.

The CHAIRMAN. Who is engaged in that?

Mr. ARTMAN. I will take care of that.

The CHAIRMAN. Senator Murkowski?

STATEMENT OF HON. LISA MURKOWSKI,
U.S. SENATOR FROM ALASKA

Senator MURKOWSKI. Thank you, Mr. Chairman.

There is a lot of frustration this morning from those who have appeared to testify, and I thank you all for your appearance and for your comments this morning. I do apologize for my tardy arrival.

I am sorry that I missed your testimony, Mr. Artman. I did review your written testimony. It is frustrating to hear the Chairman's charge or his request to you, Mr. Artman. Can you give us the specifics on this particular facility and what the problem has been. My constituents up in the State of Alaska have had frustrations that they have shared with me. One in particular has been over Indian reservation roads money that has been approved, and yet not released.

Petersburg down in Southeastern Alaska came to me and said, what is it that we have to do? We intervened and were able to finally, after a period of years, get those monies released. We just finished that with Chistochina. We again kind of shake the trees on that. That problem was resolved after a congressional inquiry. Now, we have the Seldovia Tribe that is in a similar situation.

It just seems wrong that we have to have a congressional intervention or inquiry in order to resolve these delays that we can't understand why the delay, if the approval has been made, when it is happening.

So I bring up the issue of the Indian reservation roads backlog to you. I do want to know that these are on your radar screen. I do want to know that, again for the third time now, we will ask for help with the Seldovia Tribe in processing their IRR money. But I am very concerned that it seems to be a case by case specific resolution, and that you don't appear within the BIA to have developed a process to allow for the next community that is awaiting the processing of their funding. It doesn't seem to be getting any better is my point to you.

I understand from your written testimony that the biggest backlog of appraisal requests is in the Alaska region, and you attribute this apparently to native organizations requesting appraisals directly from the Office of Appraisal Services, rather than through the BIA. Would the backlog be eliminated or reduced in Alaska if the native organizations were to directly ask the BIA for an appraisal request? Would this help?

Mr. ARTMAN. I think certainly the backlog would be reduced if that were to happen. We also need to staff up a bit more in appraisals as well. We are also taking a look at if there are any other ways to make the process more efficient. Through legal processes, is there a way that we can eliminate, reduce or somehow look at another form of appraisals that what we are currently using as well.

Senator MURKOWSKI. Do you think it makes a difference if you go directly through the BIA?

Mr. ARTMAN. I think it would, yes.

Senator MURKOWSKI. I am going to ask you about a very local issue. This is the BIA office in Juneau. It has been for years the headquarters for the BIA in the regional office. My office was contacted some months ago to confirm rumors that BIA was going to be moving the regional office out of Juneau to Anchorage over a period of 18 months. We didn't learn about this through the BIA. We didn't learn about it from what you would assume would be the appropriate channels. It was really rumors out on the street, which I don't need to tell you is kind of bad form, and we would certainly hope that if in a fact the decision has been made, that we would be alerted to that.

To compound the problem, though, your office told us that the regional office move was only proposed; that there was going to be consultation with the Alaska tribes before making a final decision. We have recently learned that your regional director, he has essentially stated that the regional office is being moved. In fact, he stated specifically, "I don't think there is any doubt about the regional office being moved." And in a meeting there in Juneau back in July, he indicated that he was under a directive from the Department of Interior to move the regional office to Anchorage.

My question to you is whether or not the Department of Interior directed your regional director, Mr. Cesar, to move the Juneau office.

Mr. ARTMAN. Okay. Thank you, Senator.

First of all, let me say very plainly and clearly, there is no directive, no directive whatsoever to move the regional office from Juneau to Anchorage. It is something that we are looking into. It is unfortunate that——

Senator MURKOWSKI. So is Mr. Cesar mistaken in stating that there was a directive?

Mr. ARTMAN. Yes, he is. It is unfortunate that rumors tend to get ahead of the facts. As you may recall, when we said we were going to begin to look at this process and only begin to look at this process, I had come up here and informed you of that, along with Senator Stevens and Representative Young as well.

We held our first consultation session on this issue in Juneau this summer. It was a very good consultation session and it was attended primarily by Tlingit Haida tribal members, and we certainly understood where they were coming from. We are going to be holding a second consultation at AFN for all the tribes. I promise a third meeting to individuals who have voiced concern regarding housing and those issues, where they are going to be taken care of. So we are going to actually have three meetings on this. I wouldn't call the second one necessarily a consultation—or third one, I am sorry—a consultation, because it is going to be discussing, but it is not with a specific tribe. It is more on a specific issue.

At that point, if it is determined that we still need additional information or additional meetings, those will be held. We are not going to rush to a decision on moving the Juneau office. It is something that we want to consider very carefully, look at all the numbers, and weigh the pros and cons of doing so. As you are very familiar with, the distances in Alaska are great, and a lot of the activities that had taken place in Juneau and that have recently come up and become new activities have been in place in Anchorage, so there is some synergy there. But customer service is going to be first and foremost, and we need to hear from the customers, the tribes themselves before we make any determination on where we go.

So there will be no moving trucks pulling up. I take it a few days ago they did not, as I believe it was reported they were coming on September 30. There has been no directive and I have signed nothing for Mr. Cesar to even move his office to Anchorage. He still should be showing up in Juneau on a daily basis.

Senator MURKOWSKI. So it is your understanding that a decision has not been made. If a decision is made to move out of the Juneau offices, what kind of a presence within Juneau would you expect to remain? You recognize it has to be customer service. You don't have a lot of access from the individuals that live in southeast to Anchorage.

Mr. ARTMAN. Right.

Senator MURKOWSKI. You are not connected by road. So do you have any idea at this point in time what you would keep in Juneau?

Mr. ARTMAN. If we were to move the offices, I believe right now we have approximately 45 employees that are working out of the Juneau office. Right now, initial estimates are that there would

still be a force of 20 to 25 people remaining in the Juneau office to provide services to the southeast Alaska area.

Senator MURKOWSKI. Let me ask you, this was brought up by Mr. Chicks, I believe, who had suggested that perhaps if there were time lines imposed or a part of the BIA's fee-to-trust process that this would help with the inordinate delays. Mr. Chicks, you are nodding your head. I am assuming that that would help with the process if you knew that there were time considerations. Is this something that you have looked at as you are attempting to provide a level of better service within the agency?

Mr. ARTMAN. Yes it is, Senator. In reviewing how our different regions handle the fee-to-trust applications, we found that the most successful regions impose some sort of a deadline on themselves to get things done and stuck to it. We will be coming out with the fee-to-trust handbook in a matter of weeks, and that handbook will too contain internal deadlines for ourselves for completing different phases of the application process.

Senator MURKOWSKI. Well, I would hope that the deadlines are deadlines that are, when you say they are self-imposed, that there would also be some self-enforcement there, too.

Mr. ARTMAN. There will be self-enforcement as well.

Senator MURKOWSKI. So it is not just a good idea written down on paper, but that you actually work to adhere to that.

Let me ask, and I believe it was Mr. His Horse Is Thunder made the comment about the lack of access to the internet due to the litigation that remains out there. Is this one of the issues that continues to lead to the inefficiency in processing so much of what we have heard today?

Mr. ARTMAN. I think it is not only the lack of the internet. There are whole business processes that we could take advantage of if we had access to the internet. Communications with tribes via them filling in forms, on the Indian reservation roads situation specifically that is another one where we could truly take advantage of that technology to expedite the process.

On fee-to-trust appraisals, all those areas can be made faster, quicker and more efficient with the use of the internet. E-mail communications would also be beneficial as well. So this inability to communicate using the latest technology is hindering our ability to provide the best service.

Senator MURKOWSKI. Thank you, Mr. Chairman.

[The prepared statement of Senator Murkowski follows:]

PREPARED STATEMENT OF LISA MURKOWSKI, U.S. SENATOR FROM ALASKA

Good Morning Mr. Chairman and thank you for holding this oversight hearing on administrative backlogs at the Department of the Interior affecting American Indians and Alaska Natives.

Acting principally through the Secretary, the Assistant Secretary and the Special Trustee for American Indians, the Department is charged with the responsibility of managing tribal and individual Indian lands, minerals, timber, crops, minerals and water. Inefficiencies and backlogs in the Department's administrative processes dealing with these resources are notorious. They have been the subject of complaints by Indian beneficiaries for decades.

There is good reason for these complaints: Indians and Alaska Natives depend on the use and development of these resources to pay their bills, raise their families and care for their elders. When the Department fails to act, or is slow to act, it affects tribal economies and it affects peoples' lives.

I am aware that the Department may have problems with backlogs in the areas of fee-to-trust applications and leasing approvals. We will hear today what progress, if any, has been made at reducing these backlogs. From what I understand, the Department has made significant progress in chipping away at the backlog of probating Indian estates, and that the current probate backlog may be eliminated by Fiscal Year 2009. If that's so, I'd like to hear more about how this was accomplished.

I think that some of the backlogs in the fee-to-trust process are caused by legal requirements applicable to the process, like, for instance, NEPA compliance, but some contend that some of the backlog in this area has been deliberate, especially with regard to off-reservation acquisitions.

Some of the written testimony has pointed a finger at the impact of individual Indian land fractionation, and I am curious to hear more about what can be done to deal with that problem.

Finally, while most of these problems seem to be more acute in the lower 48 states than in my home State of Alaska, I must say that we have some of our own backlog problems up there as well. Hopefully Mr. Artman will be able to explain how those will be handled by the Department.

I would like to thank the witnesses before us today who traveled so far to be here and I look forward to their testimony.

The CHAIRMAN. Senator Murkowski, thank you very much.

Mr. Artman, we have called you down here. You are a relative newcomer to your job, so I don't want you to leave here believing that we have created a condition in which you no longer want to serve in public office.

[Laughter.]

The CHAIRMAN. When I use the term incompetence and other terms, I feel very strongly. And I have felt this for a long time, long before you came to the BIA. I think there are parts of the BIA that are completely dysfunctional. I don't know why. I have not gone out to be able to visit with a lot of these employees. But there is something in that system that just seems dysfunctional to me.

So you have been in place a relatively few number of months. I want you to succeed. Our point in calling you up here and hearing the stories is not to hope that you fail, but it is to hope that you succeed and to have you hear first hand things that just cannot be allowed to continue. Either we are going to have an agency that works, or maybe we need some sort of dramatic wholesale change. Maybe you take the agency apart, get rid of it, start a new agency someplace with new people. I don't know. But somehow, this has to be working.

It is not just in this area. It is in area after area after area we find that the work hasn't been done that is just basic. I mean, I went to graduate school and got an MBA and I am a slave to a chart board. I want to diagram everything. I want to organize everything. But the fact is then I see that after all these years there is not even a system that will tell you, as Assistant Secretary, how many applications are pending on the land-into-trust system. Because each region is handling it differently, we don't necessarily have a collection mechanism that we are confident of. Boy, you know, it is a herculean task that you face to try to fix this.

Again, I want you to succeed and I supported your nomination because you have all of the capability of succeeding, in my judgment. But you are running an agency that I think is very resistant to change. I hope the word goes out to everyone in that agency. We admire the people who work hard and try to do a good job. I am sure you have a lot of employees that wake up every day that are

passionately committed to the mission, and God bless them. We thank them. But whoever is sitting on all these things and not doing their job, let me have a few other words for them. I hope you will as well. But let's fix all of this.

I want to call you back in six months, and Senator Murkowski and I would like to evaluate in six months what progress has been made, and how will tribes and others have some assurance that when their applications go into this deep abyss somehow that someone will actually have it, work it, and make a judgment about it. I hope that you will work with us, work with the Committee, Mr. Artman, to achieve those results.

Now again, don't leave here despondent about this hearing. Leave here I hope with the mind set that this hearing is a very constructive charge to an agency that has to improve. You are new enough to make sure that happens. Is that something you feel good about?

Mr. ARTMAN. I do, Mr. Chairman. Thank you. It wasn't too long ago that I would have been sitting down here. So I can certainly understand what my fellow panelists are feeling and who they represent and what they are feeling. I took this job not only because the President asked, but when the President asked, I thought this was something that we could leave behind as a good legacy for him as well.

The CHAIRMAN. Senator Murkowski?

Senator MURKOWSKI. No, but Mr. Chairman, I really appreciate you adding that last comment, because I think it must be very difficult to come and listen and, as you say, having been on the other side, feel the pain, if you will. It is a very difficult task, but I think part of our frustration here is, as it was pointed out, is that so many of these are not independent problems, whether it is the problems with the land appraisals, with the probates, with the EIS, with the Indian reservation roads. They are connected in the sense that you have a level of oversight from an agency that is struggling.

Maybe we need to do more directly with you and the agency to see that improvement. But we know that with every delay, it is not just the number of appraisals that are in the backlog. It has an impact to families, to communities, and our task is to figure out how we resolve the backlogs so that these families and these communities can move forward. So we will work with you.

The CHAIRMAN. Thank you very much.

Mr. Bigelow, did you want add a final comment?

Mr. BIGELOW. Yes, I did, Mr. Chairman. I first of all want to thank you for the opportunity that this has presented for us to have our issue heard. I would also like to be on that list of those invited back so I could testify on the positive aspects of what has occurred from this action here today. So if the opportunity presents itself, Mr. Chairman, I would just present that to you.

The CHAIRMAN. Mr. Bigelow, that sounds like a clever challenge.

Mr. BIGELOW. Thank you, sir.

[Laughter.]

The CHAIRMAN. Are you a lawyer?

Mr. BIGELOW. No, sir. I am a 12th grade educated high school guy who is trying to make his way in life.

The CHAIRMAN. But pretty clever.
Mr. BIGELOW. Thank you.
The CHAIRMAN. We will invite you back.
Mr. BIGELOW. Thank you, sir.
Mr. RHODES. Mr. Chairman, may I make a comment?
The CHAIRMAN. Yes. Governor, do you wish to react?
Mr. RHODES. With regards to a possible solution, the Navajo Nation has a Federal statutory provision under 25 U.S.C. 415(e) that grants the tribe authority to review and approve a wide variety of on-reservation leases upon issuance of tribal regulations approved by the Secretary. The community is interested in seeking a similar provision, and we believe that the Committee might view this provision as a potential solution for all Indian Country. We look forward to working with your staff in developing such legislation. Thank you.
The CHAIRMAN. Governor, thank you very much.
Mr. Artman, I am not suggesting you have to move into this building, but I am suggesting that you ought to fix it so that tribe can lease this building.
Thank you very much.
This hearing is adjourned.
[Whereupon, at 10:55 a.m., the Committee was adjourned.]

A P P E N D I X

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October 17, 2007

Committee on Indian Affairs
United States Senate
838 Hart Office Building
Washington, DC 20510

RE: Written Testimony Supporting North Fork Mono Rancheria NOA

Honorable Committee Members,

I am writing in support of the North Fork Mono Rancheria project and in support of the testimony presented on October 4, 2007 by Madera County Supervisor Frank Bigelow.

After a two and a half year process, the draft North Fork Mono Rancheria EIS was completed on February 2, 2007 and the draft NOA was submitted for signature as required by law. I am asking that the process be completed and allow the local community to complete its due process.

The proposed project represents a CORNERSTONE economic development project for our community that needs more jobs, business opportunities and will bring nearly $100 million dollars annually in local economic benefits not to mention the impact economic benefits to the 1,900 local tribal members.

The North Fork Mono Rancheria Tribal members have established a collaborative and constructive working relationship with our community and have garnished unparalleled community support and endorsements. In addition, Memorandum of Understandings (MOU's) have been completed and signed between the North Fork Rancheria Tribe and the County of Madera, City of Madera and the Madera Irrigation District (MID) all of which were completed in a cooperative, collaborative, constructive manner.

Postponement or cancellation of this ANCHOR project could delay ancillary growth spawned by this development and will put at risk a number of key local developments predicated upon the successful completion of this project. Postponement or cancellation of this project will also create an additional economic hardship to a community that is already suffering from the recent slowdown in the housing and construction industries.

Thank you in advance for consideration of this testimony and I look forward to the speedy and timely completion to of the NOA before you today.

Sincerely,

Steven A. Mindt by sa

STEVEN A. MINDT
Mayor, City of Madera

C: File

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Saint Regis Mohawk Tribe

TESTIMONY OF THE ST. REGIS MOHAWK TRIBE

United States Senate Committee on Indian Affairs

Committee Hearing

October 4, 2007

Interior Department: Land into Trust Applications, Environmental Impact Statements, Probate, and Appraisals and Lease Approval Backlogs at the Interior Department

I. Introduction

The Saint Regis Mohawk Tribe ("SRMT" or "Tribe") is pleased that the Senate Committee on Indian Affairs ("Committee") is holding this hearing to shed some much needed light on the very important matter of the Department of Interior's ("Department") backlog in processing fee-to-trust applications. The Tribe is submitting this statement to detail the background and status of our pending fee-to-trust application, which has been unreasonably placed on hold by Secretary Kempthorne. Given this egregious action, the Tribe hopes that our statement will assist the Committee in crafting solutions to the Department's growing backlog.

II. Background

The Tribe has been working for more than 10 years on a fee-to-trust application to acquire into federal trust status the 29.31 acre parcel at the Monticello Raceway in Monticello, New York for the Tribe's development of a casino project in accordance with Section 20 of the Indian Gaming Regulatory Act ("IGRA"), Public Law 100-497, and Section 5 of the Indian Reorganization Act

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("IRA"). On December 21, 2006, the Department issued a "Finding of No Significant Impact" ("FONSI") indicating the Tribe has met the federal regulations for environmental review to have the land taken into trust status. On February 18, 2007, New York Governor Eliot Spitzer issued the "concurrence" to the April 2000 favorable Section 20 Secretarial determination, thereby closing the Section 20 process.

As of today, however, there has been no final action by the Department on our application. We are reliably informed that Secretary Kempthorne has made it absolutely clear that he intends to indefinitely postpone the consideration of our application for reasons that he has not seen fit to share with the Tribe. Indeed, he has repeatedly refused even the courtesy of meeting with us to disclose the basis for his actions. If we could be made aware of his concerns, we would certainly do everything within our power to address them. Obviously, we can not know whether that is possible unless and until he agrees to meet with us or until he allows his subordinates to issue a final decision as they are required to do under the law.

III. Purposeful and Unwarranted Interior Department Delay of the Tribe's Application

The Tribe's fee-to-trust application is not only an example of the Departmental backlog of fee-to-trust applications, but it also appears to have been intentionally singled-out at the Department's highest level for extra-ordinary delay, resulting in the indefinite and unconscionable postponement of a final decision.

Our Tribe is certainly aware that every fee-to-trust application represents an Indian tribe's unique effort to replace its lost trust resources in order to provide land for economic development, housing, and the other desperately pressing needs of its members. In our view, it is hard to find another application that will address so many needs as thoroughly as ours. This is certainly the reason that our application is supported so strongly by the State of New York and the local community where the land is located.

In our case, the Department's findings consistently demonstrate its recognition of the level of our Tribe's desperate need to address employment, housing, and other basic needs. These findings also recognize that approving our fee-to-trust application is the only alternative that is certain to address those needs. For example, when the Department issued the FONSI on our application, it focused directly on the fact that our fee-to-trust application was the only available alternative for addressing our needs:

> *The Tribe needs a stable economic base to address problems stemming from high unemployment, insufficient housing and inadequate health care.*[1]

> *The No Action Alternative was thoroughly considered [and rejected]. As evidenced by the financial success of other casinos and financial projections for the proposed casino, [however] this project clearly presented the best opportunity for a financially successful venture. The best long term employment opportunities*

[1] Department of Interior, Finding of No Significant Impact for the Monticello Raceway Casino, December 21, 2006, at 2.

are associated with the development of this proposed casino complex based on the projected long term financial stability of the project.[2]

The clarity of the Department's findings on these issues demonstrates that our application is not being denied –or even considered- on its own merits.

The Department's inexcusable delay is especially unfair because our Tribe has gone out of its way to play by the rules and follow the law. As noted above, our application has successfully and fully completed the Section 20 process, and is the subject of a FONSI. Although the Section 20 "two part" determination process authorizing Indian gaming on lands acquired after IGRA's enactment and the IRA process, primarily set forth in the 25 CFR Part 151 Regulations, to acquire land into trust status are two separate processes, there is significant overlap in their requirements.

The Tribe's fee-to-trust application has met all applicable requirements in accordance with both Section 20 of IGRA and Section 5 of the IRA, and its implementing regulations found at 25 CFR Part 151. All that remains is for the Department to make a final decision to acquire the land into trust. We are informed, however, that Secretary Kempthorne has personally intervened to stall our application apparently due to his personal views against "off-reservation" gaming. It appears now that the Secretary may not make any decision *at all* on our application, which has already caused significant harm to the Tribe. Most alarming to us is the fact that the Secretary will not

[2] *Id.* at 3.

meet with us to explain his justification for stopping our application, and has not responded to our numerous requests to meet with him.

Through IGRA, Congress enacted a general prohibition on gaming on lands acquired in trust after October 17, 1988 and provided certain exceptions to this prohibition, including the so-called "two part determination." Congress also explicitly provides in IGRA that neither the prohibition nor the exceptions are to be construed to alter the Secretary's authority to take land into trust:

> **2719 (c) Authority of Secretary not affected**
> Nothing in [Section 20] shall affect or diminish the authority and responsibility of the Secretary to take land into trust.

It is very clear in our case that our application is being subjected to exactly the kind of discriminatory treatment that Congress anticipated –and sought to outlaw- when it enacted this provision. Without the direct assistance from this Committee and other members of Congress, this provision and the entire fee-to-trust process will become nothing more than a dead letter.

As the Committee can understand, the Tribe is losing faith that the Department's actions are guided by either the laws that Congress enacted or even its own regulations. By holding this hearing it is clear that this Committee shares our concern that laws enacted for the express purpose of addressing long-standing needs in Indian Country are simply not being implemented.

IV. Secretary Kempthorne Has Failed to Abide by the Pledges He Made During his Confirmation Process

With respect to our application, and perhaps others, Secretary Kempthorne is clearly not honoring the explicit commitment he made to this Committee and the United States Senate during his confirmation proceedings.

During his confirmation hearing, Mr. Kempthorne was explicitly asked whether he would separate his personal views about off-reservation gaming and apply the IGRA. Significantly, the question was directed to Mr. Kempthorne by New Mexico Senator Pete Domenici, who was then the Chairman of the Senate Energy and Natural Resources Committee –with jurisdiction over Mr. Kempthorne's nomination- as well as a member of this Committee. Senator Domenici specifically asked the nominee if he was confirmed whether he would faithfully implement Section 20, which places no geographic limitation on the location of off-reservation gaming facilities, as long as the Governor of the State concurs in the location. Mr. Kempthorne responded accordingly:

> *"I do not support reservation shopping. But if I am confirmed, the Department will continue to implement the provisions of Section 20 of the Indian Gaming Regulatory Act that permit off reservation gaming."*[3]

By improperly interfering the Tribe's application, Secretary Kempthorne is unquestionably allowing his personal view about what he called "reservation shopping" to over-ride his

[3] S. Hrng. 109-507, *To Consider the Nomination of Dirk Kempthorne to be the Secretary of the Interior*, May 4, 2006, at 61.

obligation to allow the Departmental decision-making process to take its course. His actions undermine applicable law, and violate his commitment to the Senate.

V. Questions and Answers About the Tribe's Application

Because the Tribe is not participating as a witness in the October 4, 2007 hearing, we have taken this opportunity to address some of the questions the Committee might have about our application.

Q. **May the Department render any decision with respect to the St. Regis Mohawk Tribe's fee-to-trust application other than approval?**

A. No. Based on the existing administrative record, the final findings of fact and conclusions in the December 21, 2006 Environmental Assessment ("EA"), the Finding of No Significant Impact ("FONSI"), the affirmative and completed Section 20 determination by the Secretary and the Governor, as well as the satisfaction of all requirements under the Part 151 process, any other decision other than an approval would be arbitrary and capricious and a breach of trust.

The Tribe's application has fully satisfied the two statutory prerequisites: Section 20 of the IGRA, and the Part 151 process under the IRA. Moreover, nether the EA/FONSI or any other part of the administrative record provides adequate support for any decision other than immediately approving the application. Accordingly, any other decision would constitute an abuse of discretion, as well as a breach of trust.

Q. **Does the Secretary of Interior have discretion to reconsider or revise the EA or FONSI ?**

A. No, the Department may only reconsider the issuance of the EA/FONSI if it demonstrates that a reviewing court would certainly determine that the EA/FONSI are so deficient that any decision that relies on these documents would necessarily be rendered arbitrary and capricious.

The issuance of an EA and a FONSI constitutes a final agency action, notwithstanding the possibility or even the likelihood of additional proceedings within an agency to resolve additional subsidiary issues.[4] The Department may only reconsider the EA/FONSI if it can conclusively demonstrate that a reviewing court would certainly determine that they are so deficient that any decision that relies on these documents would necessarily be rendered arbitrary and capricious.[5] Furthermore, because we are approaching the one year anniversary since the Department issued the EA/FONSI, the burden on the Department to demonstrate any deficiency in these documents has and continues to increase, and is now nearly insurmountable.[6] Finally,

[4] Sierra Club v. Army Corps of Engineers, 446 F. 3d 808 (8th Cir. 2006).

[5] See, for example, Belville Mining Co. v. United States, 999 F.2d 989 (6th Cir. 1993), agency reconsideration was allowed only where the administrative record was: "so deficient a challenge would probably result in finding that the decision was unlawfully arbitrary and capricious."

[6] Rosebud Sioux Tribe v. Gover, 104 F. Supp. 2d 1194, 1202 (D.S.D. 2000) reversed on other grounds *sub nom* Rosebud Sioux Tribe v. McDivitt, 286 F. 3d 1031 (8th Cir. 2002). Citing Belville and ruling that a five month interval between a decision and the agency's reconsideration rendered the reconsideration invalid.

the Department is absolutely prohibited from revisiting the issuance of the EA/FONSI in order to retroactively apply a new or revised policy.[7]

Q. Do the factual findings and conclusions in the EA/FONSI now bind all subsequent actions by any employee or official within the Department of Interior, <u>including Secretary Dirk Kempthorne</u>.

A. Yes. Administrative decisions must bear a "rational connection between the facts found and the decision made."[8] Officials within the Department must base any actions or decisions on the clear and unambiguous factual findings and conclusions of the EA/FONSI.

The Court of Federal Claims ("CFC") recently cautioned the Department that the mere filing of a lawsuit that challenges the adequacy of the Department's environmental documentation for a project does not in any way alter or diminish prevailing administrative law, which requires that <u>all</u> decisions must be firmly grounded in a "rational connection" to the facts in the administrative record. Specifically, <u>Rosebud Sioux Tribe v. United States</u>,[9] concerned a Departmental effort to avail itself of the dubious expedient of reversing its previous approval of a tribal project in order to obtain dismissal of a NEPA-based challenge of a decision. As the government learned in that case, a decision to reconsider, revise or reverse an existing decision -or even to order additional

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[7] <u>Upjohn v. Pennsylvania RR Co.</u>, 381 F. 2d. 4, 6 (6th Cir. 1967), quoting <u>American trusting Associations v. Frisco</u>, 358 U.S. 133 (1958).

[8] <u>Kansas v. Norton</u>, 430 F. Supp. 1204, 1210 (D. Kansas, 2006).

[9] 75 Fed. Cl. 15 (U.S. Fed. Cl. 2007).

environmental review- must itself be adequately supported by the applicable administrative record. In Rosebud, then-Assistant Secretary Kevin Gover sought to void a previously approved lease based on the ostensible inadequacy of the NEPA documentation, but his letter purporting to void the lease "fail[ed] to identify any specific shortcomings of the EA or to offer any reasonable basis for requiring the preparation of an EIS."[10] Both the United States District Court and the CFC independently concluded that Mr. Gover's action was per se invalid.

Q. Does the Department's proposed rulemaking implementing Section 20 of the IGRA provide a sound basis for the Secretary delay approval of or deny the Tribe's fee-to-trust application?

A. No. The February 18th letter signed by Governor Spitzer concurring with the April 2000 secretarial determination that the Tribe's fee-to-trust application for its Monticello casino project is both in the best interest of the Tribe and would not be detrimental to the surrounding community completely closes the Section 20 two-part determination process. Therefore, any proposed new rule to implement Section 20 would not apply to the Tribe's application because its application is past this process.

Q. Is it a viable alternative for the Secretary to simply delay action on the Tribe's fee-to-trust application, and leave that decision to the next Administration?

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[10] Rosebud Sioux Tribe v. United States, at 18, quoting Rosebud Sioux Tribe v. Gover, 104 F. Supp. 2d 1194 (D.S.D. 2000) *vacated on other grounds*, 268 F. 3d 1031 (8th Cir. 2002).

A. No. The Secretary of the Interior and the Bush Administration should be held accountable to execute the laws, in accordance with the statutory directives and Congressional intent. The Tribe has fully met all of the legal requirements under both Section 20 of IGRA and the Part 151 Regulations under the IRA. Neither the IGRA nor the IRA provide the Secretary the discretion to deny or delay approving the Tribe's application based on a particular "shift in policy" or based on an official's personal views.

VI. Conclusion

At this stage in the consideration of the Tribe's fee-to-trust application, the Department's discretion has narrowed to such an extent that he can no longer disapprove the Tribe's application without disregarding the factual record for this matter. The Secretary can not "utter the words unique facts and circumstances . . . as a wand over an undifferentiated porridge of facts"[11] and pronounce a decision that utterly disregards the inexorable conclusions of the EA/FONSI. Accordingly, the record for our application limits the Secretary's discretion and mandates approval of the Tribe's application. Any other decision would constitute an abuse of discretion, as well as a breach of trust. Contrary to his commitments to the Senate, however, Secretary Kempthorne has decided to simply prevent his subordinates in the Department from rendering any decision on our application. Neither this Committee nor the Senate, nor the Congress should countenance such a brazen disregard for their authority and the law. Accordingly, we respectfully request that this Committee inform Secretary Kempthorne that singling out gaming-related applications for interminable delays is contrary to the law and his commitment to the

[11] Muweka Ohlone Tribe v. Kempthorne, 452 F. Supp. 2d 105, 119 (D.D.C. 2006), quoting Philadelphia Gas Works v. FERC, 989 F.2d 1246, 1251 (D.C. Cir. 1993).

Senate. Furthermore that any further unwarranted delays will result in the Committee considering the means under its authority to compel the Secretary to render a final decision.

On behalf of our Tribe, we wish to thank the Committee again for holding this hearing.

St. Regis Mohawk Tribal Council

Lorraine M. White

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Prepared Statement

Stanley R. Crooks, Chairman

Shakopee Mdewakanton Sioux Community

For the Record of the

Senate Indian Affairs Committee

Hearing on Backlogs at the Department of the Interior

October 4, 2007

Chairman Dorgan, Vice Chairman Murkowski and Members of the Senate Indian Affairs Committee, I am pleased to offer this statement on behalf of the Shakopee Mdewakanton Sioux Community of Minnesota ("Tribe").

The Tribe appreciates the attention and focus of the Committee to the important issue of backlogs at the Department of the Interior and appreciates the use of the experience of our Tribe's 11-year fee-to-trust saga as an example of the frustrating inefficiency of the Bureau of Indian Affairs. We do not believe, however, the full responsibility rests with the BIA but rather many of the problems that tribes face are attributable to actions (or inactions) by officials at higher levels at the Department of the Interior. While we are not yet convinced of the need for an independent federal cabinet-level agency to carry out the trust and service functions required of the United States as some have advocated, we are convinced that the Assistant

Secretary for Indian Affairs needs more autonomy in making day-to-day decisions on tribal matters.

We believe that the Tribe's fee-to-trust application would have been accepted long ago but for the intense and prolonged pressure brought by local government officials applied to senior Department officials. Some are not familiar with the intricacies of federal Indian law and others seem to see everything in Indian country from a prism tainted with antipathy. We do not say this lightly but rather with strong conviction of its truth.

Our Tribe is small—there are 210 voting members and just over 400 members, including children not yet eligible to vote. Our tribal constitution requires members to reside on the Reservation in order to be able to vote and to participate in tribal government. This is important for many reasons, of course, but the primary reason is to insure the integrity of our Tribe and to keep our members involved in the challenges facing the Tribe to insure the future of the Tribe's identity, culture and homelands. Just as our membership is small, so is our land base; there are 831 acres of land held in trust by the United States for the benefit of our Tribe in Scott County, Minnesota, about 20 miles south of the Twin Cities. Partly because of the revenue generated by gaming—we were one of the first tribes in the nation to engage in high stakes bingo in the early 1980s—we had the ability to purchase land adjacent to our reservation to insure that our members have lands on which to build homes to keep their tribal citizenship active. Scott County has gone from a rural area to a very busy and growing suburban area located near the Minneapolis-St. Paul metropolis. We are confident the Tribe's economic activities have been a large factor in the explosive growth experienced in Scott County.

In 1994, the Tribe purchased a 593-acre tract of agricultural land in fee from the State of Minnesota at public auction. We applied in 1996 to have this parcel of land that is adjacent to the Reservation taken into trust for housing, community development and other purposes as stated pursuant to the guidance of the Bureau of Indian Affairs. There has never been any plan to use the land for gaming. The Tribe has always submitted these lands as part of a **non-gaming** fee to trust application. Nevertheless Scott County and two nearby cities, Shakopee and Prior Lake, objected to our application at the first opportunity, primarily because of issues related to taxes and jurisdiction. And it is true that if another entity (e.g., commercial developer) had bought the land, it may well have built houses or businesses that would have meant increased taxes for the county and cities. However, the Tribe is a government with significant resources and has a practice of providing its own essential services to any improvements on its lands. Regardless, the local jurisdictions have consistently insisted on assurances in advance from the Tribe, prior to any land being taken into trust, that it would pay taxes based on the equivalent of what they thought the land and improvements thereon might be worth in the future even though they would be providing no meaningful services to any development on the lands. Scott County also insisted that it maintain jurisdictional control over tribal lands even after being taken into trust. The Tribe has consistently viewed these positions as contrary to the requirement of federal law and regulations. We should note here that some time prior to final approval by the BIA of the Tribe's fee-to-trust application, the City of Prior Lake withdrew its objection to the transfer of the land to trust.

The BIA Area Office in Minneapolis denied the Tribe's initial application on October 7, 1998 stating that there was no showing of economic need by the Tribe. Subsequent legal inquiry determined that economic status is not a factor to be considered when the BIA reviews fee to trust applications for Indian tribes and, therefore, the denial was erroneous. Rather than appeal this decision, the Tribe filed a new application on February 22, 2000, and included an additional three (3) parcels for a total of 776.41 acres of land, all contiguous to the Reservation. Seven months later, on September 19, 2000, the Regional office sent our application to the Central office. Three years later, on October 7, 2003, Aurene Martin, Principal Deputy Assistant Secretary for Indian Affairs, returned the fee-to-trust application to the Minneapolis Regional office with instructions to make a recommendation to the Central office by no later than November 28, 2003. Ms. Martin's Memorandum stated that: "Since this application is in the final review state of the process there will be no additional comment periods." Activity on the application came to a standstill, although the Tribe understands that officials from the local jurisdictions continued to meet with high level officials at the Department of the Interior.

In January 2005, the Regional office requested additional information from the Tribes, e.g., copies of deeds, title insurance records, and environmental information that had been submitted with the application in 2000 but much of which had become "stale" by then. Finally, after many years of reviewing environmental assessments and allowing numerous extensions for public comment, the BIA Acting Regional Director approved the Tribe's application on July 7, 2006. One week later, on July 14, 2006, the Tribe received a notice from the Director of the Bureau of Indian Affairs that the approval of our application was withdrawn

and that a final decision would be made by the Central office. That withdrawal has no precedent that we know of in regard to fee-to-trust applications.

On July 18, 2006, as Chairman of the Tribe, I wrote to James Cason, Associate Deputy Secretary of the Department of the Interior (copy attached), protesting the withdrawal. The letter shows the Tribe's total frustration with the fee-to-trust process and with the attention given to opponents of the application—our ultimate trustee seemed much more interested in the concerns of Scott County and local jurisdictions than with the Tribe's concerns and needs.

What is distinguishing about this letter is that the Tribe was told that Mr. Cason, whose position was higher than AS-IA (the highest officer to whom the authority for fee-to-trust approval has been delegated) was the "go-to" person at the Department. Neither the BIA manual nor any of the official flow charts shows a person in Mr. Cason's position in the fee-to-trust application process. We were told that his sign-off was necessary to complete the process, perhaps because he may have also been in an "Acting AS-IA" capacity, although we have not confirmed that information. Mr. Cason's predilection against the government acquiring any additional land in trust for tribes is very public and well-documented. Carl Artman was confirmed by the Senate as the latest AS-IA in March 2007 and we understand that most of the duties that Mr. Cason had assumed have now been returned to Mr. Artman.

Nonetheless, it was another six months before Mr. Artman approved the Tribe's fee-to-trust application on September 27, 2007, a full seven years and seven months after the Tribe's second application was filed on February 22, 2000 and more than 11 years from the

filing of the Tribe's initial fee-to-trust application. We believe that the opposition of Scott County and its many meetings with high officials led the Department to place a much higher adversity factor on our application than was warranted and this led to unacceptable delays. If the world outside the Department of the Interior acted on a similar timetable, the economy would come to a standstill. The Tribe believes the people who actually review fee-to-trust applications for their merit and their legal sufficiency should retain the authority to act on those applications. More transparency, openness and discipline in all of the BIA's decision-making processes would be welcomed by all. The question is whether any statute could bring such a result. At the end of the day, an effective fee to trust process requires dedicated public servants who will apply the law to the facts and make decisions on that basis. This will benefit tribal governments and local jurisdictions equally. The process must be allowed to work in a timely manner. In our case, the fee to trust review process was corrupted by political influence and our fee to trust application did not receive a simple review based upon its merits with the appropriate application of the law.

Thank you for the opportunity to present our story to the Committee and for the opportunity to submit this statement for the record.

Shakopee Mdewakanton Sioux Community

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July 18, 2006

James Cason
Associate Deputy Secretary
Department of the Interior
1849 C Street NW
Room 6117
Washington, DC 20240

Via Hand Delivery

Re: **The Shakopee Mdewakanton Sioux Community's Response To The July 14, 2006, Memorandum And Action By The BIA Director And The June 28, 2006, Letter From Scott County And The City Of Shakopee Alleging Agency Bias In The BIA's Consideration Of The Tribe's Fee-To-Trust Application**

Dear Mr. Cason:

This letter addresses the July 14, 2006, memorandum from the Director of the Bureau of Indian Affairs, that seeks to withdraw a final decision regarding our fee-to-trust application issued by the Bureau of Indian Affairs ("BIA") on July 7, 2006. This letter also responds to the June 28, 2006, letter from Scott County and the City of Shakopee (collectively referred to as "Scott County"), which alleges agency bias on the part of the Regional Director.

For the reasons that follow, we urge you to: (1) cause the Central Office to re-issue the final decision issued by the Regional Director on July 7, 2006, approving the Tribe's fee-to-trust application in strict accordance with the Department's regulations; and (2) cancel Scott County's meeting, which apparently was previously scheduled with you before the July 7, 2006 final decision was issued. Should you decide to deny either of these requests, we ask that you meet with the Tribe as soon as your schedule permits.

The Tribe must ask you what process the Department will now use to accomplish what the BIA Director sought to do in his July 14th memorandum. Further, if Scott County meets with officials from the Department of the Interior or the BIA regarding the Tribe's fee-to-trust application, the Tribe must in all fairness be accorded an opportunity to know what information Scott County is providing to the federal government and to address and refute such information where appropriate. The Tribe is dismayed that after more than six years of due process and near unlimited opportunities to comment on what should be a routine fee-to-trust application, Scott County once again appears to have been given another chance to interfere with the consideration of the Tribe's application.

1. **The July 14th Memorandum Issued By The BIA Director Must Be Withdrawn.**

The Tribe initially began to prepare a response to Scott County's June 28th letter. Then we received a copy of the July 7th final decision and concluded that the bias allegations raised by Scott County would be more appropriately addressed in the appeal that Scott County publicly stated they would file. A week later, the Tribe received a copy of the July 14th memorandum from the BIA Director.

The BIA Director's withdrawal of a final fee-to-trust decision, which has been in the administrative process for more than 6 years, is highly unusual and is without precedent known to the Tribe. Such a withdrawal is not contemplated within the contours of the Administrative Procedure Act. It is not consistent with the fee-to-trust regulations, which only permit an appeal of a final decision and requires "the exhaustion of any administrative remedies." 25 C.F.R. § 151.12. We believe the action violates the intent of the fee-to-trust regulations maintained by the Secretary, which were "chosen to regulate the decision-making process in order to promote national uniformity."[1]

The Tribe was never informed that its application would be processed in and issued by the Central Office. It would appear the Regional Office was likewise without this information. As you know, Regional Directors possess long-standing authority to issue fee-to-trust decisions in applications like ours for lands to be used for residential housing that are contiguous to existing trust lands. In this case, the Central Office specifically referred the Tribe's application to the Minneapolis Regional Director to process the Tribe's application. Despite these explicit delegations of authority, the Tribe was never notified that the Director of the BIA would personally review the case record and then issue a final decision.

Therefore, we request that you direct the withdrawal of the July 14th memorandum because it is outside of the regulatory process, it will delay even further our long-delayed application process, and it contradicts long-standing authority granted to the Regional Director.

2. **Scott County's Allegations Of Regional Director Bias Against Scott County And Hostility To The Central Office Lack Merit And Are Advanced In Bad Faith.**

The June 28th letter is a part of Scott County's ongoing efforts to delay and to improperly influence the Tribe's fee-to-trust application by providing you with false statements and unsupported allegations after the administrative record has closed. Because of the highly irregular nature of the July 14th memorandum and the timing of the June 28th letter, we believe that we must respond to the June 28th letter and correct its gross mis-characterizations.

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[1] Land Acquisitions, Final Rule, 60 Fed. Reg. 32874 (June 23, 1995).

In sum, there exists no bias or hostility and Scott County's true position is that anyone who disagrees with them is either biased – the Regional Director – or hostile – the Tribe. Scott County's allegations of the Regional Director's bias against them and hostility towards the Central Office are without foundation or merit. The "evidence" provided to you in the summary attached to the June 28th letter is easily rebutted, especially when the statements highlighted by Scott County are viewed in the original and intended context.

A. The claim that Regional Director Virden said "not everyone agreed" with the Regional Director's 1998 decision does not indicate bias on the part of Mr. Virden.

One can easily and reasonably infer from the purported statement of Regional Director Virden that he was merely acknowledging that the rationale underlying the 1998 decision was short lived and has been rejected several times since then by the Interior Board of Indian Appeals (the "IBIA") in other similar cases.[2]

Scott County's duplicity in raising this allegation is evident by its insistence that "new circumstances" require Central Office interference while urging at the same time allegiance to "old circumstances" found in the 1998 application.

Viewed in its true light, Scott County only seeks to establish and apply a pernicious fee-to-trust standard – successful Indian tribes do not need land in trust. The folly of such a standard is readily apparent and has been repeatedly rejected by the IBIA since 1998. Followed to its logical policy end, Scott County's claim would force an Indian tribe to choose between economic success without trust land or poverty with trust land. Neither any Congress nor any Secretary has ever articulated such a policy.

B. Scott County erroneously assumes that the Tribe's fee-to-trust application was not "under active consideration."

As you know, the fee-to-trust regulations do not classify applications as active or inactive. There is no record that Scott County believed that the application was inactive until its claim in its June 28th letter. In recent years and months they met with you, submitted voluminous written comments to the Regional Office, and spoke with great vigor to the local news media about their opposition to our pending application. Further, the Tribe was never informed that its application was not under active consideration. If relevant at all, this remark is indicative of Scott County's success until July 7th in slowing the BIA's consideration of the

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[2] Avoyelles Parish, LA, Police Jury v. Eastern Area Dir., 34 IBIA 149 (IBIA 1999) ("A financially secure tribe might well need additional land in order to maintain or improve its economic condition if its existing land is already fully developed."); Cty. of Mille Lacs, MN v. Midwest Reg. Dir., BIA, 37 IBIA 169, 173 (2002) (same); Shawano Cty. v. Midwest Reg. Dir., BIA, 40 IBIA 241, 248 n.6 (IBIA 2005) (approving trust acquisition for economically successful Tribe when need is for housing and self-determination).

Tribe's application. The law requires that the "Secretary shall review all requests and shall *promptly* notify the applicant in writing of his decision." 25 C.F.R. § 151.12(a).

In regard to the draft Environmental Assessment (EA) report, Scott County says that the Regional Office notified "them that an EA had been released." This statement is inaccurate. At that time, the Regional Office's notice pertained to a draft EA, which solicited comments from Scott County and others in strict accordance with the law. Scott County responded to the notice with substantive comments, which were considered by the Regional Office and are referenced in the July 7th final decision.

C. The Tribe did not work "behind the scenes" with the BIA on its application.

First, Scott County alleges that a draft decision had been prepared "even before the comment period on the EA had closed." We would be surprised to learn if this was true. Even if true, the Scott County's concern is misplaced because, generally, the issuance of a fee-to-trust decision coincides with the determination on the EA. All this demonstrates is due diligence on the part of the Regional Office.

Second, the Regional Office's use of the word "client" when referring to the Tribe is overstated. This has occurred one time and in only one letter and is not evidence of bias. The word client is subject to several meanings, one of which is "one dependent on the patronage or protection of another,"[3] which is one common way to describe the relationship between an Indian tribe and the Federal government. The term client also properly refers to owing a duty to another, which applies here because the Regional Director is required by law to "promptly"[4] process the Tribe's application and is subject to an appeal for agency inaction.[5] Further, the trust responsibility the United States owes to the Tribe is a foundation of Federal Indian law, which exceeds the typical client relationship. Therefore, the stray use of the word client is immaterial. Even if Scott County is correct that the BIA should not refer to Indian tribes as a client when processing a fee-to-trust application, its use here does not conjure up anything inappropriate and is harmless.

Third, Scott County refers to a BIA document that states that an EA "must be submitted to this office for a FONSI" (Finding of No Significant Impact). Scott County interprets this statement as proof that the "BIA had already decided to issue a FONSI." When reasonably considered, the BIA document stands for the unremarkable proposition that an EA precedes a FONSI. A Federal agency cannot make a FONSI if it does not first conduct an EA. Nothing in the BIA document or the EA indicated that the BIA had already made a FONSI decision in this case.

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[3]American Heritage Dictionary, 2nd College Edition, Houghton Mifflin Company (1991).

[4]25 C.F.R. § 151.12(a).

[5]25 C.F.R. § 2.8.

Fourth, Scott County believes that the Regional Office cannot request information from the Tribe "demonstrating the SMSC's charitable contributions to the community to help build the SMSC's application." This type of request for additional information from the Tribe is both contemplated and authorized by the fee-to-trust regulations.[6] If anything, Scott County's argument demonstrates bad faith. In addition to being authorized by the regulations, the IBIA has determined that an Indian tribe's track record of making charitable contributions is relevant to the BIA's consideration of removing "the land from the tax rolls."[7] A tax impact analysis may consider "the contributions that the Tribe is making from its gaming revenues to local government projects."[8] Because this information is relevant to the fee-to-trust regulatory factors, the Regional Office was well within its discretion to request additional information from the Tribe under 25 C.F.R. § 151.12. In fact, here, as in every other respect, the Regional Office carried out its regulatory duties and responsibilities with impeccable care.

D. The e-mail from the Regional Director to the Central Office does not indicate bias when viewed in its original context.

Scott County selectively quotes and paraphrases from an e-mail sent by the Regional Director to the Central Office. The e-mail, however, is an informal summary of the Tribe's application as it existed in December of 2005:

> We'll provide a more thorough briefing asap. FYI, only Scott County is raising a stink. Prior Lake has supported the acquisition and Shakopee has gone along with the county but not very strongly. We met with the cities and county and it appears several of the staff members are driving this. This has been pending since 2000 and everyone has had ample time to provide comments. We even told the group they only had to supplement their previous submissions. This one is headed for appeal and probably court. In the County's last letter they said they would run to Cason if we didn't extend the comment period. We had extended once and with the EA they had over 70 days to respond. The only real argument they have put up is they think rich Indians don't need trust land. As for their issues, we have a good staff here and won't ignore real issues, if they exist. You know Mike, at some point our acting ASIA needs to let us do our job. The system allows for ASIA input when it goes to IBIA.

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[6] See 25 C.F.R. § 151.12 ("The Secretary may request any additional information or justification he considers necessary to enable him to reach a decision.").

[7] 25 C.F.R. § 151.10(e).

[8] South Dakota v. Acting Great Plains Reg. Dir., BIA, 39 IBIA 283, 297 (IBIA 2004), see also, Rio Arriba v. Acting Southwest Reg. Dir., BIA, 38 IBIA 18, 26-27 (IBIA 2002) ("contributions to the local tax base from tourists visiting (the Tribe) and the (Tribe's) employees, the majority of whom are non-Indian" are relevant to the tax roll analysis).

For an e-mail that probably took just a minute or two to write, it is an informally accurate 200-word description of an application whose record consists of thousands of pages of documents. Scott County's allegations to each sentence should be dismissed summarily.

E. The February 15, 2006, internal memorandum pertaining to the EA strictly complies with the law and indicates no agency bias.

Scott County believes that the BIA was pre-determined to issue a FONSI and rely exclusively on the February 15th memorandum as purported proof. This memorandum, however, merely establishes an EA timeline *should* a FONSI be issued. Nothing in the memorandum guarantees that a FONSI would be issued.

The BIA was merely providing suggestions to the Tribe when the Tribe initially drafted the EA. The BIA was critical of the Tribe's draft EA and encouraged the Tribe to make certain changes prior to filing the draft EA with the BIA for its finalization. Under Federal law, the BIA may allow the Tribe to submit a draft EA so long as the federal agency makes its own evaluation of the environmental issues.[9]

F. Scott County misrepresents the Tribe's efforts to achieve consensus, fails to accurately describe the underlying issues, and errs by assuming that the BIA must resolve Scott County's problems.

First, Scott County alleges that the Tribe has "essentially ignored" their efforts to address their opposition to the Tribe's fee-to-trust request. In fact, the Tribe has met with Scott County and their staff on numerous occasions and continues to do so. In the June 28th letter, Scott County claims that the Tribe has evidenced no desire to meet and discuss its application. Yet in the June 28th "Summary" attached to the letter, Scott County admits that "the County and [Shakopee] City communicate and interact regularly with Tribal officials."[10] Further, Scott County fails to inform you that recent negotiations culminated in a successful agreement just last month right around the time Scott County dated its June 28th letter to you. The Tribe is

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[9] Carcieri v. Norton, 398 F.3d 22, 42 (1st Cir. 2005).

[10] It is a fact that the Tribe and Scott County meet on a regular basis. In its first comments to the BIA on December 20, 2000, Scott County stated that "the staff of both Scott County and the Community interact on a daily basis to further the mutual purposes and interests of the two entities. In addition, representatives of the County Board and members of the Tribal Business Council periodically meet to discuss issues, negotiate agreements, and review staff activities and projects." (Scott County, Dec. 20, 2000, Comments at p. 1). Likewise, the City of Shakopee also stated in its January 26, 2001, comments that "[t]he City has been able to work cooperatively with the Shakopee Mdewakanton Sioux Community on a variety of matters over the years." (City of Shakopee, Jan. 26, 2001, Comments at p. 1). These prior representations by Scott County and the City of Shakopee are accurate today.

voluntarily contributing $2,000,000.00 to Scott County for improvements to Scott County Road 82 – $1.4 million in cash and $600,000 in rights-of-way.

Second, Scott County avoids explaining that the Tribe's multiple efforts to discuss its application with Scott County have always ended with the same result. Scott County wants to control development by first authorizing all Tribal development. Once authorized, then Scott County wants to regulate such development. Lastly, Scott County wants to receive a payment in lieu of taxes at future, developed tax rates in order to support Scott County's desire to exercise expanded and unlawful jurisdiction over the Tribe. They confirm this fact by representing to you that no solution is possible "without adversely affecting our governmental authority or the economic interests of our communities." Scott County wants to exercise veto power over the Tribe's trust acquisition applications and over the Tribe's development. This type of regulation by a County over an Indian tribe has long been rejected.[11] As you know, the primary purpose of a trust acquisition is the transfer of jurisdiction.[12]

Third, and most important, Scott County's desire to exercise jurisdiction and receive tax money under the State's power to tax is legally irrelevant to the fee-to-trust inquiry. Instead the BIA must address "jurisdictional problems and potential conflicts of land use which may arise". No jurisdictional conflicts exist because the Tribe's need and use of the land is consistent with Scott County's zoning and current uses.

This fact is confirmed by aerial photographs that chronologically depict the march of residential development right up to our fee lands during the time our application has been pending. By delaying a decision in our trust application, and by approving more and more residential development surrounding our parcels, Scott County attempts to strengthen its argument that payments in lieu of taxes should be set at future real estate tax rates, which are increasing as a result of surrounding development within their control. This argument has no place in the fee-to-trust application process and should be given no credence by the Tribe's trustee.

The record supports the Tribe's efforts to address Scott County's concerns even though the Tribe is not legally required to do so. The Regional Director's final decision correctly

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[11] See Bryan v. Itasca County, Minn., 426 U.S. 373, 388 (1976) (Subjecting the Community to these governments' civil jurisdiction will convert the Community into a "private, voluntary organization - a possible result if tribal governments and reservation Indians were subordinated to the full panoply of civil regulatory powers, including taxation, of state and Scott Countys.").

[12] The Supreme Court recently confirmed that the fee to trust process "provides the proper avenue" for an Indian tribe "to reestablish sovereign authority over territory." City of Sherrill v. Oneida Indian Nation, 125 S.Ct. 1478, 1494 (2005), see also Land Acquisitions, Final Rule, 60 FR 32874, 32877 June 23, 1995 ("It should be noted that tribal governmental authority over land will generally not attach until the Secretary accepts title to this land in trust status.").

acknowledged that "the Tribe has documented 28 meetings whereby the Tribe has participated with the local governments to resolve" common jurisdictional issues. (Final decision, July 7, 2006 at p. 7). The IBIA has held that "[t]he regulations do not require the Regional Director to resolve all possible jurisdictional conflicts prior to acquisition."[13] And the Federal Courts have determined that the regulations "do not require the BIA to resolve conflicts that might arise or to oversee negotiations or to enforce specific commitments on potential conflicts."[14]

G. The fee-to-trust regulations do not require the Secretary to determine that the Tribe needs its land to be placed in trust.

Scott County continues to adhere to a fee-to-trust position that has been uniformly rejected by the Federal Courts. They allege that Regional Director Morin's 1998 decision correctly decided that the Tribe cannot demonstrate a "need for the land to be placed in trust." The Eighth Circuit Court of Appeals this year rejected the same argument forcefully made by the State of South Dakota:

> We agree with the district court that it would be an unreasonable interpretation of 25 C.F.R. § 151.10(b) to require the Secretary to detail specifically why trust status is more beneficial than fee status in the particular circumstance. It was sufficient for the Department's analysis to express the Tribe's needs and conclude generally that IRA purposes were served.[15]

This argument, therefore, must be rejected outright.

Conclusion

Scott County's allegations of bias[16] are unfounded and constitute a desperate and bad faith attempt to delay and influence the fee-to-trust process. In fact, on behalf of the Tribe I met with all of the parties of interest in February, 2006, including the elected leaders of the Scott County Board, the City of Prior Lake and the City of Shakopee. At that meeting, in an attempt to bring closure to this fee-to-trust process, Prior Lake Mayor Jack Haugen suggested that all parties sign on to a letter to the BIA encouraging that a decision be made. The parties were not

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[13]South Dakota v. Acting Great Plains Reg. Dir., 39 IBIA at 300.

[14]City of Lincoln v. United States Dept. Of Interior, 229 F.Supp.2d 1109, 1126 (D.Ore. 2002).

[15]South Dakota v. U.S. Dept. of Interior, 423 F.3d 790, 801 (8th Cir. 2005).

[16]Scott County wholly fails to meet the legal standards applicable to an allegation of federal agency bias. See South Dakota v. U.S. Dept. of Interior, 423 F.3d at 802 (Oacoma); South Dakota v. U.S. Dept. of Interior, 401 F.Supp.2d 1000, 1011-1012 (D.S.D. 2005) (Flandreau); Maxey v. Kadrovach, 890 F.2d 73, 77 (8th Cir. 1989); Corning Savings & Loan Assoc. v. Fed. Home Loan Bank Bd., 736 F.2d 479, 480 (8th Cir. 1984).

asked to alter their positions on the merits of the application. I supported this effort. Scott County and the City of Shakopee refused. Scott County has filed four separate rounds of official comments and numerous, additional letters opposing the Tribe's application. The record has been extended each time for Scott County to file these additional comments and evidence. With each successive round of comments, Scott County proves that nothing new has been added to the record. The record closed months ago and the Tribe on numerous occasions have stated that a final decision needs to be made. The Regional Director has dutifully considered all of Scott County's comments, as is well reflected in the BIA's final decision.

Again, should you decide to still meet with Scott County or implement the July 14th memorandum issued by the BIA Director, we ask that you meet with the Tribe as soon as your schedule permits. If you have any questions or comments, please contact me.

Sincerely,

Stanley R. Crooks
Chairman

cc: Jon Ulrich, Scott Cty. Bd. Of Comm.
John Schmitt, Mayor, City of Shakopee
Jack Haugen, Mayor, City of Prior Lake
Michael Olson, Deputy Asst. Sec., BIA
W. Patrick Ragsdale, Director, BIA
Terrance Virden, Regional Director, BIA

Friday, October 19, 2007

AEROTEK
CE

To whom it may concern,

Please except this written letter as testimony to my support of the NFR Development Project taking place in Madera County. As a long time citizen of Madera County I have seen the positive aspects that can come from such an undertaking and stimulation that it can provide our growing community. I fully believe that this addition to Madera County will not only provide additional recreational opportunities but that it will also contribute as a major factor in the growth or our communities economy.

It is not often that a community project with such size and scope is backed by such an overwhelming show of support. The recent bottleneck in the Senate's handling of this process is both alarming and disheartening. Even more alarming is the lack of public explanation as to reasoning for the delay.

I fully believe that the members of the tribe and the citizens of Madera County will prosper together from this project. Every day that the process is held up by bureaucratic "red tape" is another day that we are kept from that potential prosperity. We need to take the required steps to put this process back in motion in a timely fashion.

Thank you for you time and attention.

Sincerely,

Sam Prosperi
Account Manager
Aerotek Staffing
617 Everglade Ave.
Clovis, CA 93619

From: Sally L. Frazier
To: Indian-Affairs, Testimony (Indian Affairs);
Subject: Comments regarding North Fork Rancheria NOA
Date: Thursday, October 18, 2007 4:44:25 PM

To Whom It May Concern,

Thank you for the opportunity to offer comments regarding the North Fork Rancheria NOA. Madera County's educational system represented by a school district and the county office of education were invited to participate in the overall economic development interests that would result from the North Fork Rancheria project. Within the MOU with the Madera County Board of Supervisors for the North Fork Rancheria project was an Education Foundation that would provide funds in support of educational programs that would be designed to meet local interests and needs. The educational community has a history of productive and beneficial working relations with like projects.

Discussions are underway to develop career pathways in hospitality management that will allow our students (many of whom are impoverished) to see their way to a brighter future and to becoming contributing members of our communities.

For the overall economic growth and for the vision of hope, many educational leaders are interested in seeing this project become actualized.

Sally L. Frazier, Ed.D.
Superintendent of Schools

Sally J. Bomprezzi, Mayor Pro Tem
City of Madera
205 West Fourth Street
Madera, CA. 93637
559-664-5805

October 15, 2007

U.S. Senate
Committee on Indian Affairs

Re: Written Testimony Supporting North Fork Rancheria NOA

Dear Committee:

My name is Sally Bomprezzi, Mayor Pro Tem for The City of Madera. I am writing this letter in support of North Fork Rancheria NOA.

After a nearly two and one-half year process, on February 2, 2007, the draft North Fork Rancheria EIS was completed. At the same time, a draft Notice of Availability (NOA) was circulated to Department officials for signature as required under BIA policies. Typically, the signature gathering process takes four to six weeks, after which the NOA announcing the issuance of the draft EIS and a public comment period, is published in the Federal Register. Yet nine months later, the NOA remains unpublished, and the Department has yet to articulate a reason for the delay.

This notification process is statutorily mandated under (National Environmental Policy Act (NEPA) to alert the public of the availability of the draft EIS. By failing to publish the Notice of the completed draft EIS, the Department is violating its own polices required under NEPA and failing at one of its most basic duties.

Community Impact
Delay in this process has had the following impacts on a community that strongly supports and needs the proposed project:

- Madera County and the region should be allowed, and indeed encouraged, to plan and execute their economic development and land use futures in cooperation with the aboriginal Indian tribe without unnecessary, unexplained delay by the federal government.
- The proposed resort represents a cornerstone economic development project for a region that needs more jobs, business opportunity, and community funding. The resort will generate roughly $100 million in annual local economic benefits and activity. Accordingly, each day of delay costs Madera County and the region roughly $275,000 in lost financial resources.

- Cancellation or further postponement of this anchor project could delay ancillary growth spawned by the development and put at risk number several key local developments predicated upon the successful completion of the NFR project. Such events could exacerbate systemic imbalances already within the local economy as well as a regional economic slump caused by a recent slowdown in the local housing and construction industries.
- The project has garnered unparalleled community support among Indian gaming projects; with more than 4,000 individual support signatures and endorsements from every Chamber of Commerce in the area. In addition, the Tribe has negotiated Memoranda of Understanding (MOU) with the City and County of Madera as well as the Madera Irrigation District (MID). These voluntary inter-governmental/agency agreements will generate nearly $100 million over 20 years for community projects and to proactively address and mitigate impacts of the proposed project (in addition to mitigation measures addressed in the yet undisclosed EIS). Delays in this project denies the community access to much needed funding for an array of services such as public safety, education, economic development, traffic engineering, charitable giving and more.

Tribal Impact

Delay in this process has had the following impacts on the nearly 1,900 Tribal Citizens that make up the North Fork Rancheria:

- The development project represents the single most effective option for breaking the cycle of chronic high poverty and unemployment that plagues both the Tribe and the community as a whole. Delaying the process heightens concerns and tensions that this opportunity will not be realized for the betterment of NFR[1]s 1,900 tribal citizens.
- The Tribe is responsible for repayment of all expenditures as they relate to trust acquisition, including the $1.8 million spent for environmental review. This extensive delay has accrued thousands of dollars in additional interest expenses as well as other costs.
- The delay has also cost the Tribe millions of dollars in lost revenues from the resort. Reasonable expectations would have expected the EIS process to have been completed by now and the next stage the process - land into trust - to commence.
- Throughout the land-to-trust process, the Tribe has been fully transparent, collaborative, and constructive in its relations with local community stakeholders. The Tribe has also attempted to set reasonable expectations with the local community, governmental representatives and Madera County residents. The inexplicable and unreasonable delays on the part of the BIA have jeopardized the credibility and goodwill the Tribe has worked so hard to establish with its community partners.

Thank you.
Sincerely,

Sally J. Bomprezzi

From: Rosanne Bonilla
To: Indian-Affairs, Testimony (Indian Affairs);
cc: Charles Altekruse;
Subject: FW: Testimony Supporting North Fork Rancheria NOA
Date: Tuesday, October 16, 2007 7:35:26 PM

Date: Tue, 16 Oct 2007 14:41:08 -0700

ATTENTION DEPT OFFICIAL:

It has come to my attention, that nothing has prompted you to complete and release the FIS document for public review.
As a Madera business person I can't stress enough the urgency that goes with this project.

You are denying our local community a chance to get jobs that North Fork Rancheria would of had in place if it wasn't for the elected official that our bypassing this very important project in our community. Why can't you see the necessity that has united our citizen with the North Fork Rancheria to bring this project together.

We urge you to consider and approve this proposal when our Supervisor Mr. Bigelow's comes before you, on October l8,2007

Yours truly

Rosanne Bonilla

Realtor/Broker

Robert and Donna Marden

3674 Riverview Drive

Madera, CA 93637

October 17, 2007

US Senate Indian Affairs Committee

RE: **RE: Written Testimony Supporting North Fork Rancheria NOA**

Dear Committee Members,

We are volunteers for the Madera Police Department, our interest lies in the growth of our community and the well being of our citizens. We are writing in support of the proposed North Fork Rancheria development project and to urge the BIA to release the Draft EIS.

Moving this process and project forward will especially serve the needs of traditionally underserved segments of our community who stand to benefit most from the economic stability, job growth and community enrichment the project will promises. But average citizens and community organizations such as ours will benefit as well from the increased hospitality and entertainment options and charitable giving the project will bring – but only if the BIA allows the process to move forward!

Each day of delay costs the region nearly a quarter of a million dollars in lost wages and payroll, purchases of local services and products, and charitable and public funding stemming directly from the project. These costs are too high for a fast growing community such as Madera that desperately needs employment, business, and educational opportunity for our youth.

Please move the North Fork Rancheria EIS process along without further delay.

Sincerely,

Robert Marden,
Donna Marden

Date: 10/16/07

To Whom It May Concern:

From: Rick Farinelli GM/VP of Production Berry Construction.

Subject: Gaming Resort

I have been a resident of Madera County over 54 years, started off my life as a Farm Boy, went into the Service at 18, then went to worked for Georgia-Pacific, Madera, Ca, for over 30 years. I took early retirement and retired as a Director of twelve Produce Container Plants with a budget of over $780,000 million dollars. I then went to work for Berry Construction. I have worked for Berry Construction for over two years now. One of my responsibilities is to bring new business into the City and County of Madera. So far we have brought into the City and County over 370,000 sq. ft. and 135+ high paying jobs, this does not include our "new" tenants that lease over 155, 000 sq. ft. in the past year.

Over 30 years ago the Georgia-Pacific Corp. asked a question to the City and County of Madera; what can our employees do for entertainment in Madera. The answer is the same today as it was over 30 years ago!!! We are the Gateway to Yosemite and we are only 2-1/2 hours from the Coast, plus Fresno is only 20 minute away. The only reason Georgia-Pacific moved to Madera was the freight savings shipping direct to Madera Glass and the Winery.

Today we have a chance to add a wonderful Gaming Resort to our Community. Not only does this Gaming Resort bring over 1,400 hundred jobs to Madera, but will boost the City and County's revenue ten fold. This also does not include the temporary construction jobs that a large scale project like this will bring to Madera. The City of Madera is currently raising New Development Impact Fees and is trying to raise water bills to each household in Madera. The reason for this is; that since the City does not have enough revenue from the lacking Retail Market, they have to

raise revenue by attacking Industry and Housing the only income they have to run the daily functions at the City. This is just poor Econ 101 and a bid-aid in trying to fix a serious problem in Madera.

The local news reported a 7% decrease in New Home building in Fresno, Ca. last quarter, while Madera, County increase home building over 15%, because Madera still has affordable living.

By adding this large Gaming Resort to Madera we will be able add more affordable living and bring the needed Retail Stores, Restaurants and actually be able to tell large Corporations that want to move into Madera, County that we do have social entertainment at our New Madera County Gaming Resort.

Rick Farinelli
GM/VP of Production
Berry Construction, Inc.
413 West Yosemite Ste. 106
Madera, Ca. 93637

October 18, 2007

To: The U. S. Department of Interior, Bureau of Indian Affairs
From: Randall L. Brannon, Citizen of Madera, Calif.
Re: Written Testimony Opposing North Fork Rancheria NOA

I write as a private citizen, and as representative of *Citizens For A Better Madera, the Madera Ministerial Association, and the Madera Hispanic Ministerial Association* in opposition to the proposed Gaming Casino of the North Fork Mono Indian Rancheria. It seems that the voice of the public has been silenced in this issue as a high majority of the people of Madera stand in opposition to this project. This was most obvious at a May 19, 2005 hearing held by Senator Dean Florez, D-Shafter, during which both pro-and con arguments for the project were offered. When it was time for the general public to give its opinion it was a resounding NO! Supervisor, Vern Moss, who represents District 2, where the casino would be built, has repeatedly taken opinion polls of his constituents, finding that 80% of them (including my wife and me) were opposed to the casino. Subsequent to this hearing, Senator Florez wrote an article in the Fresno Bee (Feb. 24, 2006, page B 9) where he opposed Governor Arnold Schwarzenegger's decision to embrace off-reservation gaming. He said, *"Anything less than a resounding 'no' vote on the governor's current proposed off-reservation compacts could mean the start of a new gaming arms race, with the potential proliferation of slots in every corner of our society, thus summarily destroying the dream of Native American economic self-sufficiency."* In face of adversity and opposition, the North Fork tribe continues to present a "done deal" posture to the community of Madera. Please consider some of the reasoning for direct opposition, these being reasons enough to cease consideration of the project by your committee which has been accused of not fulfilling your role and responsibility by dragging your feet and not releasing the draft of the Environmental Impact Statement for the North Fork Rancheria development project:

1. No advisory vote of the general population has been taken. The Board of Supervisors (4 to 1) acted independently of the the will of the people. Even Gov. Schwarzenegger proclaimed that such a local advisory vote be taken in all such cases.
2. The land for this project is urban (not rural as portayed). It stands on the edge of the city limits of Madera where two new shopping malls are to be built in the next two years. It is only 3 miles from the heart of Madera, and next to a residential area on the other side of State Route 99. In addition, over 65,000 vehicles pass this site daily (no wonder the tribe wants this parcel) on a two-lane (each way) roadway that is already congested. The interest of Madera is not in the mind of the tribe. Jim Boren, of the Fresno Bee (jboren@fresnobee.com) wrote a column on Feb. 19, 2006, where he stated, *"There's a casino and hotel proposed for Highway 99 in Madera County. If approved, that area would quickly become urban* (which it already is) *and congested. With all the money at stake, the old rules about Indian gaming don't seem to apply. Build them anywhere, and let the cash roll in. Find a good piece of property and push the federal Bureau of Indian Affairs to put it in trust. The casino proposal in Madera County is typical of the new thinking by the tribes and their Nevada partners. Even though the public wants casinos on tribal land in rural areas, the tribes are pushing for more lucrative sites."* This indeed says it all!
3. Contrary to what the tribe states, the Casino is not a good short or long-term financial deal for Madera as it will have negative impact on expansion of other industries and developments interested in coming to Madera, a town which is thriving with new industry and development. You should speak to some of the independent businesses in Madera concerning this issue.
4. The tribe is leap-frogging the Chukchansi Indian reservation, looking at a site that is 30+ miles from their home, on the very edge of a rapidly expanding community. There is NO evidence that this location was ever ancestral territory of the North Fork Mono tribe, this being substantiated by a St. Mary's College/ Univ. of Calif. anthropologist at the May 19, 2005 hearing in Madera before Senator Dean Florez. It is most evident that the tribe has pinpointed the location that will bring the largest economic windfall. The tribal leaders have stated that they determined this site because it would be the very best for all of the people affected, this being ludicrous.
5. To support this proposal in any way is gambling away the life and vitality of a beautiful, growing city. According to the 1999 final report of the *National Gambling Impact Study Commission*, grave deleterious effects will be inflicted upon our community including: increase in crime; fostering of pathological and problem gamblers, including almost 15% of those who work at such a facility; destruction of families; financial ruin of individuals and families; increased domestic violence; more delinquent behavior by minors including school truancy (Madera already is facing a crisis in this area); increase in drug and alcohol use leading to additions and associated manifestations; greater increase of prostitution; job loss by employees, and lower productivity within many businesses; burden on the social services of the community; increase in suicide rate; and, increase in need for spiritual, emotional, and sociological counseling because of personal problems.

With these few thoughts, I request that you do not give any consideration to the North Fork Mono Rancheria's request for your committee to release the EIS on their behalf. This request, being bankrolled by Nevada gambling operatives does not have the interest of the integrity and sanctity of our community in mind, but only the money that will roll into their coffers. Their ulterior motives cannot be hidden.

Thank you for giving consideration to my input and request. I stand as a representative of the majority of the people of our great city where I have resided with my family for the past twenty-four years, and count it a privilege to be here.

Sincerely, Randall L. Brannon, rbrannon@gccmadera.com; randall.brannon@comcast.net

US Senate Indian Affairs,

On behalf of Golden Valley Chamber of Commerce, we strongly support the release of the draft Environmental Impact Statement for the North Fork Rancheria development project.

It is the position of the Golden Valley Chamber of Commerce that further delays will only exacerbate the problems for the Madera County and North Fork Rancheria.

Development in the area has already begin any further delay will only cause a hard ship for developers and Madera County. With out proceeding, with the Environmental Impact Statement the community is denied access to much need funding for a variety of services such as public safety, traffic engineering, and economic development.

Golden Valley Chamber of Commerce therefore strongly supports North Fork Rancheria development project and Madera County Supervisor Mr. Frank Bigelow and his efforts to move this project along.

Golden Valley Chamber of Commerce remains hopeful and can not stress enough our support for this North Fork Rancheria project.

Thank you,
President:
Ollia Ridge

AgPRO MARKETING

DARREN SCHMALL
27877 Avenue 8
Madera, CA 93637
(559) 363 - 5433

NICOLE DARRACQ
18135 Bourbon St.
Jackson, CA 95642
(209) 981 - 6541

October 18, 2007

Marilyn Bruce
Bureau of Indian Affairs
Senate Committee on Indian Affairs

Re: Written Testimony Supporting North Fork Rancheria NOA

Dear Ms. Bruce and Committee Members:

I am a partner in a agricultural marketing business based in Madera County. This community has struggled for many years with high unemployment, low paying jobs, impoverished schools and lack of infrastructure. The proposed Resort by the North Fork Rancheria will help address these issues that a community relying solely on commodity based agriculture cannot solve on its own. The Memorandum of Understanding between the North Fork Rancheria and the City and County of Madera is poised to contribute nearly $100 million over the next 20 years to city and county coffers, an extraordinary amount of money that Madera County's local governments could never generate without this project. In addition, there are several other major developments in the area predicated on this project and due to the delays in releasing the NOA these projects are on hold. Developers will not wait forever, and could pull their projects if they do not see progress on the Resort. Along with many forward-looking business owners in Madera, I strongly urge you to move forward on the release of the NOA immediately, as this community is suffering as a result of this inexplicable delay.

In addition to the instability placed on the community with these expensive delays, the North Fork Rancheria residents are being denied the opportunity to help their own people. The Tribe is losing millions of dollars in lost revenue from the proposed Resort, as well as being forced to pay interest on borrowed money for all EIS work that has already been completed. Its members are doing without funding for health care, education programs and job training because of lack of revenue. The Tribe has worked diligently with the community and has offered on-going long term investment in not only business and infrastructure, but in local tourism, education and the arts, which NO OTHER tribe in Madera County has done. They have been transparent in their due diligence and have over 4000 letters of support for the project from local residents. The members of the North Fork Rancheria deserve the right to become self-sufficient and to better the lives of its members and our community by being allowed to move forward with the NOA.

Thank you for your prompt action on this matter.

Respectfully yours,

Nicole Darracq
Partner

sent via email: nicole@agpromarketing.com

Dear Committee Members,

On behalf of the entire Amey family, I am submitting this support for the building of the North Fork Rancheria to be built in Madera County.

You see our family is quite large and we are in support of this project being built in Madera County as we realize that it will boost the economy. We extend across the globe and can trace our roots with factual data. This was not an easy task to do since our family was forced to come to the U.S. from Africa. Through many hard times many members of the famly finally made it to California and settled in Madera County and visit here for a family every year. So please if you will release the NOA for the EIS and allow this process to continue without further delay.

Thank you,

Nettie Amey

US Senate of Indian Affairs Committee

Re: Written Testimony Supporting North Fork Rancheria NOA

On behalf of Fairmead Community& Friends is a non-profit advocacy organization working in partnership with the Community Action Partnership of Madera County. We are advocating on the behalf of the residents of this unincorporated rural township of which the majority of its residents are of low or no income. In support of the proposed North Fork Rancheria Development Project awe urge the BIA to publish the NOA to this project immediately. By immediately moving this process and project forward it will serve the needs of all Madera County residents especially the needs of the Fairmead Community, which is in direct proximity of the proposed development site.

For many years the Fairmead Community has asked for a greater voice in Madera County, and has challenged the system in order to build a better Community. Since Fairmead is an extremely diverse community that is culturally rich. In years past, other community groups have tried to appeal to the powers that be but have only suffered from lack of employment an ineffective infrastructure and public facilities that foster a healthy community The North Fork Rancheria will address the many needs directly and indirectly through bringing plenty of good paying jobs, business investments and community funding, but only if the BIA allows the EIS the process to unfold in a timely manner.

The people of Madera County and the Community including the residents of Fairmead need and want the North Fork Rancheria Project.

We feel that the BIA and the Federal Government does not have the right to deny economic opportunity and self determination to the citizens of Madera County. Please allow this process to continue without further delay. Thank you for your attention and let's move forward now.

Regards,

Nettie L. Amey, Chairperson/President

COLDWELL BANKER
H & L REAL ESTATE

322 W YOSEMITE AVE.
MADERA, CA 93637
BUS. (559) 673-9178
FAX (559) 673-2114

October 18, 2007

To whom it may concern:

Re: Supporting North Fork Rancheria NOA

My concern is about the delay of the draft for North Fork Rancheria NOA. I support getting this completed for several reasons, economic impact on our community and business.

I'm asking for a decision to be made and action taken to complete this task. We need the jobs and income from this economic opportunity that the North Fork Rancheria NOA can provide.

Thank you
Larry Hall

Larry Hall
322 West Yosemite Avenue
Madera, CA 93637
(559) 673-9178

Harbison International Inc.
Engineers - Surveyors - Planners

October 19, 2007

To: Members of the U.S. Senate Indian Affairs Committee:

RE: Written Testimony Supporting North Fork Rancheria Notice of Availability

Dear Committee Members:

I am writing this letter in support of the North Fork Rancheria Resort. As a member of the committee to bring business to Madera County, it is imperative that we support this project that represents a cornerstone to economic development for a region that is in dire need of new jobs, business opportunity and community funding. This project and others will not only bring millions of dollars into the community, but also would provide thousands of jobs and new career development to an area that greatly needs this resource.

I am sure that you understand the impacts such a delay has caused for this community. The project represents the most effective option for breaking the cycle of poverty and unemployment for both the Tribe and Madera County community. Thousands of dollars have been accrued in additional interest expenses, besides the millions of dollars of lost revenue from the resort. Madera County should be allowed to plan and execute their economic development and land use in cooperation with the Indian tribe without unnecessary and unexplained delays from the federal government.

I respectfully submit this written testimony on behalf of my company and as a committee member urging your support in the release of the draft environmental impact statement for the North Fork Rancheria's development project, and to support the testimony of Madera County Board of Supervisor Frank Bigelow's presentation of October 4 to your committee.

Sincerely,

Mike A. Hamzy
Principal / Owner

2755 E. Shaw Ave., Suite 101 • Fresno, CA 93710, USA
Tel: 559-294-7485 • Fax: 559-294-7481
E-mail: mike@harbisonint.com
Website: www.harbisonint.com

113 North R Street • Madera, CA 93637 • (559) 673-8004 • Fax (559) 673-4699

October 19, 2007

U.S. Senate Committee on Indian Affairs
Sacramento, California 94203

Re: North Fork Rancheria NOA

Gentlemen,

I am writing in support of the North Fork Development Project in Madera and asking that the Bureau of Indian Affairs release the completed draft EIS document for public review and comment. This project is strongly supported within our Community including every Chamber of Commerce in the County, the City and County of Madera as well as thousands of local citizens who have signed individual support signatures.

The positive economic impact on our coummuity is tremendous. The project will provide employment, business opportunities and funding for many community services. Your favorable consideration to this request is appreciated.

Sincerely,

Monte Pistoresi

The Board of Supervisors

County Administration Building
651 Pine Street, Room 106
Martinez, California 94553

John Gioia, 1st District
Gayle B. Uilkema, 2nd District
Mary N. Piepho, 3rd District
Susan A. Bonilla, 4th District
Federal D. Glover, 5th District

Contra Costa County

John Cullen
Clerk of the Board
and
County Administrator
(925) 335-1900

October 17, 2007

The Honorable Byron L. Dorgan
Chair, Committee on Indian Affairs
United States Senate
838 Hart Office Building
Washington, DC 20510

Dear Chairman Dorgan and Committee Members:

Contra Costa County, California, appreciates the opportunity to present testimony for the record relative to the Committee's October 4, 2007 hearing on Backlogs at the Department of the Interior: Land into Trust Applications; Environmental Impact Statements; Probate; Appraisals; and Lease Approvals.

Contra Costa County is currently the home of one out-of-area tribe operating a Class II casino on lands acquired through congressional action, without any mitigation of off-reservation impacts. Two more out-of-area tribes currently have pending "restored" land acquisition applications for casinos. We are an active participant in those applications. We would like to share our experiences with the Committee, our reflections on the current system, and our recommendations on how the system could better take into account the perspectives and needs of all affected parties: the applicant, other tribes, state government, local governments and the local community.

Contra Costa County would be pleased to discuss any or all issues relating to our testimony with the Committee or Committee staff. Our primary staff contact is Sara Hoffman, Assistant County Administrator, at 925-335-1090. Our federal representative is Paul Schlesinger, Alcalde & Fay at 703-841-0626.

Sincerely,

Mary N. Piepho
Chair, Board of Supervisors

cc: Members, Contra Costa Board of Supervisors
Senator Dianne Feinstein
Senator Barbara Boxer
Paul Schlesinger, Alcalde & Fay

Testimony of
Contra Costa County, California
Before the
Committee on Indian Affairs,
United States Senate,
Oversight Hearing on Backlogs at the Interior Department
October 4, 2007

Introduction

Contra Costa County, California, appreciates the opportunity to present testimony for the record relative to the Committee's October 4, 2007 hearing on Backlogs at the Department of the Interior: Land into Trust Applications; Environmental Impact Statements; Probate; Appraisals; and Lease Approvals.

Contra Costa County is one of the nine San Francisco Bay area counties, located north of Alameda County and across the bays from the City of San Francisco and Marin County. We are a County of about 1 million people.

Contra Costa County is currently the home of one out-of-area tribe operating a Class II casino on lands acquired through congressional action, without any mitigation of off-reservation impacts. Two more out-of-area tribes currently have pending "restored" land acquisition applications for casinos. We are an active participant in the Fee-to-Trust Land Acquisition application process. We have been however, very frustrated and dismayed by the lack of transparency and structure in the process and what we consider are inequitable standards.

Witnesses at the hearing certainly presented compelling testimony that, in some cases, processing delays at the Department of the Interior can and should be addressed. Contra Costa County believes that the land acquisition and associated environmental review process could be improved. However, system efficiencies should enhance, not deter, reasoned, fact-based decision-making that considers the perspectives and needs of all affected parties: the applicant, other tribes, state government, local governments and the local community. The ramifications of taking land into trust is enormous and, to our knowledge, irrevocable.

Contra Costa County would like to share our experiences with the Committee and our reflections on the current land acquisition and associated environmental review system. Our testimony addresses the following issues:

Explosion of Casinos in California

- California's situation—number, size, and status of tribes and casinos
- Restored status gives preemptive rights to casinos:
  - Bypasses the two-part determination process.
  - Allows gaming without mitigation of off-reservation impacts.
- Reservation shopping is a reality.
- Off-reservation casinos unfair to tribes with casinos on traditional homelands.
- Off-reservation casinos inconsistent with tribal sovereignty principles.
- Non-gaming California tribes receive revenue sharing trust funds.

Land Acquisition System- Efficiencies

- Need for sequenced review process - Indian Lands Determination first.
- Notifications to state and local governments.
- Open, transparent review process.
- Criteria for expedited reviews.

Land Acquisition System- Standards

- Standards for land acquisitions by restored/newly recognized tribes.
- Disconnect between environmental review process and mitigation of impacts.
- Review standards for Class II and Class III gaming projects.

We conclude expressing our concern that the current land acquisition process is fostering the casino explosion in California. We respectfully request that the Committee address the driving forces behind this phenomenon by reforming the system and/or providing for tribal recognition that grants eligibility for housing, health and human services, but not gaming under the exception provisions of IGRA.

Explosion of Casinos in California

Number, size and status of tribes and casinos in California - With 107 recognized tribes, there are already more recognized tribes in California than any other state except Alaska (235 tribes). In the lower 48 states, there are 326 recognized tribes in 33 states. Nine states have only 1 tribe, 16 states have 2 to 10 tribes, 4 states have 11 to 19 tribes, New Mexico has 23 tribes, Washington, 29 tribes and Oklahoma, 36 tribes. (March 2007, Federal Register).

California is facing a nearly 60% growth in the number of recognized tribes: 61 tribal groups in California have either petitioned or filed letters of intent to petition for recognition, most as "restored" tribes. If all are granted recognition, California will have 168 tribes (February 2006, List of Petitioners by State, Office of Federal Acknowledgement, Department of the Interior).

California also differs from other states in the number of very small tribes, many bands of larger Indian peoples. For example, the federal government has recognized 18 bands of Pomo Indians: the Hopland, Lytton, Guidiville, Kashia, Potter Valley, Middletown, Manchester/Point Arena, Habematolel, Dry Creek, Robinson, Coyote Valley, Cloverdale, Sherwood Valley, Big Valley, Scotts Valley, Elem (Sulphur Bank), Pinoleville and Redwood Valley. The smallest of these tribes has 33 members, largest has 833 members. In all of California, only 8 tribes have more than 1,000 members, while 6 tribes have fewer than 20 members. This compares to the Navajo Tribe with 264,056 members. (2003, American Indian Population and Labor Force Report, BIA)

Regardless of size, every federally recognized tribe in California now has the right to open a casino, subject to the provisions of the Indian Gaming Regulatory Act (IGRA). Restored tribes have preemptive rights under IGRA exceptions. Casinos approved under the exceptions can result in negative, unmitigated off-reservations impacts that affect the local economy, quality of life and demand for services from county and state governments. We are very concerned about our ability to finance those increased service demands, and to meet our legal and moral obligation to protect the health and welfare of our citizens and businesses.

California is already host to 54 Indian casinos (March 2006, Statewide Gaming Devise Count list, California Gambling Control Commission). All of the restored tribes have either opened casinos or have pending casino applications. Even the Graton Rancheria, which testified in Congress that it had no intention of opening a casino, has a pending gaming application.

Indian tribes' rights to operate casinos in California were granted in 2000 with the passage of Proposition 1A. When California voters were asked to approve Proposition 1A, California tribes promised that casinos would be located on their historic reservation land, primarily in rural areas. That promise is being broken by restored tribes, who are using the exception provisions in IGRA, to the detriment of local communities and other tribes who kept the promise of Proposition IA and operate casinos on their traditional homelands.

Restored Status Gives Preemptive Rights to Casinos - The Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. § 2701 *et seq.*, establishes the statutory structure of Indian Gaming in the United States. It generally prohibits gaming on Indian Lands acquired in trust after October 17, 1988 (the date IGRA was enacted), and requires that tribes seeking to game on land acquired after that date undergo a two-part determination by the Secretary of the Interior and

obtain concurrence of the Governor under Section 2719(b)(1)(A), unless one of the exceptions under Section 2719(b)(1)(B) applies:

(i) - exception for land that is taken into trust as part of the settlement of a land claim.
(ii) - exception for tribes that have been newly acknowledged by the Secretary and had land taken into trust as a result of that acknowledgement.
(iii) - exception for lands taken into trust as part of the restoration of lands for a tribe that has been restored to federal recognition.

The two-part determination process provides important protections for local communities and other tribes. It requires the Secretary of the Interior to consult with officials of the state government, local governments and nearby tribes. Approval requires that the Secretary find that the acquisition is in the best interest of the tribe and its members *and* that it is not detrimental to the surrounding community. Conversely, under the exception provisions, community impact is not a consideration.

The two-part determination process also requires concurrence with the Secretary's determination by the Governor of the involved State. This too is an important protection, since the Governor can weigh the benefits to the tribe against the impacts on the local community and other tribes and provide for appropriate mitigation of off-reservation impacts through the State-Tribal Compact. Conversely, under the exception provisions, the Governor is required to engage in good faith negotiations to complete a State-Tribal Compact, regardless of the appropriateness of the proposal and its impact on others. Furthermore, the good faith negotiation requirement means that the Governor has limited leverage in ensuring that mitigation is part of the compact.

Additionally, restored Tribes can operate Class II gaming facilities without any compact. Technological advances have blurred the distinction between Class II and Class III devices, such that they trigger similar impacts. Yet, there is no mechanism to ensure mitigation of off-reservation impacts of Class II gaming.

In Contra Costa County, Casino San Pablo is currently operating over 1,000 Class II slot machines, plus gaming tables with no mitigations to the State or County (The Tribe does have an agreement with the City of San Pablo, however, it is not the City, but the County and State that bear the cost of increased traffic, emergency services, health and human services, justice system and other off-reservation impacts, all except for police services). These Class II machines are very popular: reports indicate that the machines are being played more than 9 hours per day, earning the Tribe over $410 per day per machine (this compares to an average $127 per day for Class III machines in Nevada in 2006).

Reservation Shopping is a Reality- Contra Costa County's experience is illustrative of the reservation shopping practices now rampant in California. In

2000, one out-of-area tribe was granted a reservation through congressional action. Two more out-of-area tribes now have pending "restored" land acquisition applications for casinos in the County. None of these tribes has any historic connection to Contra Costa County; rather, their historic territory begins approximately 100 miles north of the County and across the San Francisco Bay.

The three casino sites were chosen to take advantage of the lucrative San Francisco Bay area market. They are within a 4 mile radius in a densely populated, highly urbanized area close to Interstate 80, the major north/south freeway corridor and the Richmond Bridge, which links the East Bay to Marin County. One of the Casino projects is also proposing operation of a ferry to/from downtown San Francisco.

These "reservations" are not truly reservations in the traditional sense: there are no tribal housing, education or service centers. No tribal members currently live, or report any plans to live on the properties. The Scotts Valley Band owns 33.5 acres in Lake County, acquired for housing under a federal grant. Similarly, the Guidiville Band owns land in Mendocino County, also acquired through a HUD grant for housing. No one lives on the existing Casino San Pablo site either: 9 acres in size, it consists only of a casino and parking.

As of July, 2006 the Department of the Interior's published list of pending gaming applications showed 69 applications nationwide, with 25 from California. Nine of these applications were "off-reservation," 15 were submitted under IGRA's "restored" exception and one under the "land settlement" exception. Clearly, reservation shopping is now the norm in California.

Off-Reservation Casinos Unfair To Tribes with Casinos on Traditional Homelands - IGRA exceptions allow newly recognized and restored tribes to leap-frog over tribes with existing casinos within their historic territory, to gain market advantage. In its Indian Lands Determination Request, the Scotts Valley Band admits that it chose Contra Costa over Lake and Mendocino Counties to avoid competition from other tribal gaming facilities and because of the potential for greater profits from gaming in an urban area (Request at 51-53).

This unfairness was pointed out by one tribe in their statement of opposition to the reservation shopping fee-to-trust application of the Scotts Valley Band:

> "Casino gaming on the Subject Land would certainly divert gaming that would otherwise occur at already operating tribal casinos in more remote locations. These tribes did not have the opportunity to select their casino site; rather their casino location was mandated by the location of their historic lands. Acquiring the Subject Land in trust for the Scotts Valley Tribe for purposes of gaming would, therefore, not provide a sense of parity between the Tribe and other federally recognized Northern California tribes. Instead, it would create disparity. Acquiring the Subject Land for the Scotts Valley Tribe would not eliminate disadvantages between the Tribe and other nearby tribes. It would grant an

> immense economic advantage to the Tribe, at the direct and substantial expense of the other tribes. Acquiring the Subject Land for the Scotts Valley Tribe would not place the Tribe in a comparable position with earlier recognized and landed tribes. It would elevate the Tribe far above these other tribes. Such results would confer more than a just measure of restitution on the Scotts Valley Tribe. The results would be inequitable and unfair." Rumsey Indian Rancheria of Wintun Indians' Comments in Opposition to Scotts Valley Band's Fee to Trust Application, May 4, 2005, at 15-16 (emphasis in original).

Off-Reservation Casinos Inconsistent With Tribal Sovereignty Principles - Other tribes have opposed off-reservation casinos for non-economic reasons. The California Tribal Business Alliance opposed the side-by-side casino proposals of the Los Coyotes Band of Cahuilla and Cupeno Indians and the Big Lagoon Rancheria, despite the fact that none of their six tribal casinos would face competition from the proposed casino complex.

The Los Coyotes Band is a San Diego County tribe and the Big Lagoon Rancheria is from Humboldt County, over 700 miles apart. The proposed casino is in Barstow, San Bernardino County, which is inland and not close to either tribe's aboriginal territory. The Tribal Business Alliance pointed out that the disconnect between off-reservation casinos and historic territory compromises the principles of tribal sovereignty.

In an August 15, 2006 letter to the Honorable Roy Ashburn, California State Senate, the Chairman of the California Tribal Business Alliance wrote:

> ... we are sympathetic to these two tribes' desire for economic development to improve the lives of their members.
>
> However, we believe that allowing a tribe to extend its jurisdiction hundreds of miles from its traditional homeland causes irreversible erosion to tribal sovereignty and tribal governmental jurisdiction. The recognized territory of a tribe has historical and cultural significance, and it is a key element in the legal basis for a tribe's sovereign authority over its land and people. Tribes that abandon that jurisdictional foundation are giving up an essential ingredient of sovereignty – territoriality.
>
> If some tribes are willing to voluntarily leave behind their traditional homelands, it will become more difficult to defend tribes against being forced from their lands against their will, as has happened many times in the not-so-distant past. Furthermore, when these tribes move, they end up in another tribe's homeland, compromising that tribe's sovereign authority and cultural identity. We also believe that moving tribes from their traditional homelands, whatever the reason undermines public support for the gaming franchise voters awarded tribes through Proposition 1A in 2000 and violates the pledge made by tribes that gaming would take place only on tribal lands.
>
> So to argue that tribal opposition to off-reservation casinos is purely anti-competitive politics suggests that you view tribes as just another business, and not as sovereign governments rooted in the territory of their people,

> governments that must endure and meet the needs of their people through the generations.
>
> We want to make sure that you are aware that there are much broader issues at stake when off-reservation casinos are proposed, and that the views of tribes expressing concerns with these proposals are not cast in a dismissive or belittling context.

Seven individual tribes and the Tribal Alliance of Sovereign Indian Nations also opposed the Barstow casino project: the Agua Caliente Band of Cahuilla Indians, the Morongo Band of Mission Indians Tribal Government, the Pechanga Band of Luiseno Indians, the San Manuel Band of Mission Indians, Sycuan Band of Kumeyaay Nation, the Cachil Dehe Band of Wintun Indians and the Morongo Band of Mission Indians. The California Assembly Committee on Government Organization's bill analysis cited their concern "as an invasion of other tribes' traditional territory." The Chemehuevi Indian Tribe testified that the 4 tribes with historical, ancestral ties to the Barstow area are the Serrano, Mojave, Kawaiisu and the Chemehuevi tribes.

Non-Gaming California Tribes Receive Revenue Sharing Trust Funds - In California, 26 tribes that operate casinos contribute to the Revenue Sharing Trust Fund, in accordance with their State-Tribal Compacts. The Fund distributes $1.1 million each year to each federally-recognized "non-compact" tribe (a tribe with no casino or one with fewer than 350 slot machines). Between July 1, 2000 and March 31, 2007, the Fund distributed approximately $252.2 million.

In 2006, 71 tribes received Revenue Sharing Trust funds, including 52 tribes that have no casinos. The Trust Fund provides an important alternative source of revenue to these tribes, and demonstrates that there are viable alternatives to "a casino for every California tribe."

The Revenue Sharing Trust Fund is at risk though, if the federal government approves casino projects under the restored lands exceptions of IGRA. Such approvals provide no mechanism for the continuance of California's model revenue sharing structure.

Land Acquisition System- Efficiencies

Indian Lands Determination Should Come First - Currently, for newly recognized and restored Tribes, the Fee-to-Trust application and environmental review process can proceed concurrently with the Indian Lands Determination Request.

Concurrent processing has resulted in Contra Costa County having to dedicate substantial resources, both financial and personnel, to participate in the Indian Lands Determination Request, Fee-to-Trust application and environmental review process for the Scotts Valley Band's casino project. The Tribe has undoubtedly spent even more. The BIA has also spent considerable staff time.

The efforts of the BIA, County and Tribe will be an unnecessary waste of time and money if the Indian Lands Determination Request is not approved (the County has submitted evidence that clearly demonstrates lack of geographic, historic or cultural ties to the land).

We believe it would be more efficient (and a better use of scarce financial resources) if a determination is made on the Indian Lands Determination Request *prior to* the Fee-to-Trust application and environmental review process. Sequencing the land acquisition process would help reduce the unnecessary work load of BIA staff (especially important given their 10% vacancy rate), and allow them to focus on applications that do not require, or have an approved, Indian Lands Determination. Sequencing would expedite the process to the benefit of all.

Better Notification to State and Local Governments needed - Assistant Secretary for Indian Affairs Carl Artman stated in his testimony that

> "Once an applicant has submitted sufficient information, the BIA sends out notification letters to the state, county and municipal governments having regulatory jurisdiction over the land, with a request to respond within 30 days with a description of the impact of transferring the land into trust regulatory jurisdiction, real property taxes and special assessments."

We are very concerned about the timing and effectiveness of the notification process.

Notice of proposed projects – Local officials should be notified and consulted as soon as a tribe initiates its application, not after the application is "complete." This would allow time for us to consult with the tribe in the particulars of their application and begin to assemble the team necessary for meaningful participation in the process.

In our experience, even this notice does not occur: Contra Costa County never received official notice of any of the three casino project proposals within its jurisdiction. Our Community Development Director just happened to see a legal notice in the newspaper about the scoping session for Casino San Pablo. We learned of the other two proposed casinos through articles in the newspaper. We discovered the Indian Lands Determination Request of the Scotts Valley Band

only by initiating a Freedom of Information Act request to the Bureau of Indian Affairs. The Scotts Valley Band's request was submitted in November 2005. The County received its copy on May 12, 2006.

Time for Response - The 30 day limitation to identify and assess the impact of a land trust acquisition for all applications is not reasonable for more complex projects. We agree that applications seeking only to provide housing, medical, social or public safety facilities/services for a tribe with an existing reservation should proceed as expeditiously as possible and thirty days may be sufficient to identify and assess the impact of such an acquisition. However, it is not reasonable to expect interested jurisdictions, other tribes or other stakeholders to produce credible evidence supporting or opposing an application within such a short period of time for

- Land acquisitions for gaming purposes or
- Land acquisitions by newly recognized or restored tribes, eligible to establish gaming facilities under one of the exception provisions of IGRA.

The County's analysis of the impact of the Scotts Valley Band's casino project occurred through the environmental review process. We identified issues of concern in the Scoping Report and provided assessments of impacts through our comments on the Draft Environmental Impact Statement. These assessments were very time-consuming and expensive since we needed to rely on outside consultants. It would have been impossible to complete them within the 30 days referenced by Secretary Artman.

Notifications of fee-to-trust decisions - Currently, fee-to trust decisions are published in the Federal Register; however, most local governments do not have the personnel or technical resources to monitor the Federal Register on a regular basis. Since there are no clearly defined schedules, local agencies cannot predict when a decision would be made, thus making it very easy to miss the Federal Register notification.

The BIA should commit to pre-publication notices to all intervenors and participants in the process, particularly local jurisdictions with "cooperating agency" status. Notification should be by registered mail to the governing body of the jurisdiction, or their designated contact person.

Open, Transparent Process Needed - The current system allows for local governments to be "blind-sided." When Contra Costa County first became involved in the Indian Gaming application process, it was overwhelming and very daunting. We had no idea about the process, standards for review or time-frames. We only knew that acquisition of trust land was an irrevocable decision which would have significant, long-lasting consequences in our community.

Assistant Secretary Artman acknowledged the impact on local government:
> "Taking land into trust is an important decision not only for the Tribes seeking the determination, but for the local community where the land is located."

Local Governments cannot adequately fulfill their responsibility to protect the residents and businesses of their communities if the system does not provide at least basic information on the process.

Expedited review "tracks" may be appropriate - Assistant Secretary Artman stated in his testimony that there are approximately 1,211 fee-to-trust submissions pending and identified factors that differentiate applications. Some applications are obviously much more complex than others. Some, particularly gaming projects in urbanized areas, would have much greater off-reservation impacts than others.

The three casino projects in Contra Costa County are a good example: all are located within a 4 mile radius in a densely populated, highly urbanized, low-income area with high rates of crime and unemployment. The regional transportation system is at capacity. Interstate 80, a major commercial corridor through the San Francisco Bay area and the access route to the casinos, is already one of the most congested freeways in California.

As part of the environmental review process for the Scotts Valley Band's casino project, the County identified numerous off-reservation impact issues, including transportation, community revitalization, economic development, environmental justice, increased service demands on County Costa County and the social costs associated with gambling (mental health, depression, suicide, alcohol and other drugs, domestic violence, child abuse and neglect, elder abuse, demand for welfare and general assistance, truancy, loss of employment, divorce, criminal activity, need for health care and emergency medical services, exposure to second-hand smoke and other potential consequences of the casino on the public health and well-being of the residents of our county). Note that in California, counties are responsible for health, welfare and justice system services (except courts), so that we bear the cost of those off-reservation impacts.

It may be possible to establish review tracks appropriate to the different types of applications, based on the potential level of off-reservation impacts. Applications with minimal or no potential impacts could have an expedited review process, while others, such as casino projects and land acquisitions for newly recognized and restored tribes, could have a more extensive process, commensurate to their magnitude.

There may also be opportunities to create expedited review tracks predicated upon unequivocal state government, local government and community support for a project. For example, the Committee received testimony from Madera County, California that asserted strong, wide-spread consensus support.

Conversely, here in Contra Costa County, the County vigorously opposes the two pending casino projects, for valid reasons. Projects like those in Madera County could be expedited, while those like the ones in Contra Costa County could receive more time and attention. Note that support would need to be carefully documented, preferably with legally binding agreements between the tribe and *all* affected jurisdictions.

Land Acquisition System - Standards

Higher Standards necessary For Land Acquisitions by Restored/New Recognized Tribes - As previously discussed, restored and newly recognized tribes have special rights under IGRA. They can operate Class II gaming under the exception provisions as a matter of privilege, without the concurrence of the Governor and without any accountability for off-reservation impacts. They can operate Class III gaming under the State-Tribal Compact, which must be negotiated under conditions which limit the probability of a project that truly meets the needs of all affected parties and is detrimental to none.

The superior status of restored/newly recognized tribes not only means that they can by-pass the 2 part determination protections established by IGRA, they can also leap-frog over tribes with existing casinos within their historic territory, to gain market advantage.

Consequently, the BIA needs to review *all* restored/newly recognized tribal land acquisitions as though the land acquisition is for gaming purposes. Otherwise, newly recognized/restored tribes will be encouraged to follow the example of the Big Lagoon Tribe which is now asserting its right to operate a casino on land acquired for housing. Alternatively, the BIA could restrict use of the property to the non-gaming use specified in the application, and ensure that such restrictions are judicially enforceable.

Fix Disconnect between Environmental Review Process and Mitigation of Impacts - The current EIS process does not ensure mitigation, since NEPA only requires the *identification* of off-reservation impacts. The BIA has no mechanism to ensure implementation of mitigation measures identified in the environmental impact statement. Similarly, local communities have no mechanism for redress if mitigations do not occur or are inadequate.

State-Tribal Compacts cannot be relied upon for ensuring mitigation for local off-reservation impacts. California's current governor may be cognizant of the needs of local communities, but other governors have not shared this concern, nor is there any assurance as to the stance of future governors.

Memorandums of understanding between tribes and local jurisdictions are not necessarily viable either, since there may not be a nexus between the impact

and the signatories to the agreement. For example, the Lytton Band in Contra Costa County has an agreement with the City of San Pablo. However, with the exception of police protection, the costs of off-reservation impacts are borne by the County and the State, not the City. Furthermore, agreements are almost always limited to circumstances where there is support of the land acquisition, and address only those issues recognized by the Tribe.

Litigation is not a viable mechanism either. Local jurisdictions have no standing in court against tribal actions on their trust lands.

The importance of mitigating impacts cannot be understated. For example, the Federal Clean Water Act (33 U.S.C. Section 1251 et seq.), California Porter-Cologne Water Quality Control Act and applicable implementing regulations require counties to protect the water quality of their watercourses. Specifically, a county's National Pollutant Discharge Elimination System (NPDES) permit requires implementation of appropriate source control, site design, and stormwater treatment measures for projects that create or replace ten-thousand square feet or more of impervious surface. The purpose of such measures is to:

- Minimize increases in nonpoint source pollution caused by stormwater runoff from development that otherwise would degrade local water quality.
- Control the spills, dumping, or disposal of materials other than stormwater into the stormwater system;
- Reduce stormwater runoff rates and volumes and nonpoint source pollution whenever possible through stormwater management controls;
- Ensure management controls are properly maintained and pose no threat to public safety;
- Promote no adverse impact policies as developed by the Federal Emergency Management Agency and the Association of State Floodplain Managers, to the maximum extent practicable, in an effort to minimize the adverse impact of new development on stormwater quality or quantity.

It is not fair for the federal government to require that local governments limit the type, manner and amount of particulates that enter navigable waters while exempting trust lands from those same compliance standards. It is also not fair that local governments face substantial fines for non-compliance, regardless of the reason for non-compliance (such as off-reservation impacts).

The disconnect between identification and mitigation of off-reservation impacts is a major flaw in the system and needs correction. Otherwise, the EIS process is a sham and fails to remedy very real consequences of land acquisition.

Apply same review standards to Class II and Class II gaming - Technological advances have blurred the distinction between Class II and Class III devices. Tribes that install either type of device in their casinos trigger similar impacts on surrounding communities and local government. Thus, tribes that

operate either Class II or Class III gaming devices should be subject to the same mitigation requirements.

Casino San Pablo is currently operating over 1,000 bingo-based slot machines, plus gaming tables, with no mitigations to Contra Costa County. If the federal government takes land into trust for the Scotts Valley Band and/or the Guidiville Band under the "restored lands" exception, as requested, then they too could operate Class II machines absent mitigation.

Conclusion

The transfer of jurisdictional sovereign rights from state and local government to a tribe is a serious matter. Contra Costa County respects the desire of tribes to govern their people on their own land. At the same time, we have the legal and moral obligation to protect the health and well-being of the citizens and businesses within our County.

Contra Costa County believes that the current casino explosion in California is an unintended consequence of IGRA. We also believe it is possible to reform the system to protect the interests of tribes seeking trust lands, tribes that already have trust lands and local communities.

Contra Costa County respectfully requests that the Committee address the driving forces behind the casino phenomenon by reforming the system and/or providing for tribal recognition that grants eligibility for housing, health and human services, but not gaming under the exception provisions of IGRA.

Thank you for your consideration.

2331 Fresno Street Suite 115 • Fresno, CA. 93721
(559) 441-7929 Fax: (559) 495-4811 Website: www.sjvbcc.org

October 17, 2007

US Senate Indian Affairs Committee

RE: RE: Written Testimony Supporting North Fork Rancheria NOA

Dear Committee Members,

I am writing in support of the proposed North Fork Rancheria development project and to urge the BIA to publish the NOA for this project. without further delay.

One of the SJVBCC Chamber's missions is to represent and advocate on behalf of businesses and the socioeconomic well-being of our community. the North Fork Rancheria, a member of our organization, is one of the largest proposed economic development projects in the region, and directly supports our organization's goals.

. The North Fork Rancheria Tribe has worked constructively with all local governmental entities to build a project that will truly serve the needs of this region and its diverse citizens. Business endeavors such as these should be rewarded rather than unduly penalized.

We ask that the federal government fulfill its roles and responsibilities by following the standard rules and procedures governing the EIS process for Indian gaming and land-into-trust projects such as the North Fork Rancheria resort.

Our region, Central California, faces a number of severe, endemic economic imbalances that fall most heavily on the shoulders of our diverse populations. The North Fork project will help address this situation by bringing much needed

jobs, vendor opportunities, and public funding but only if the BIA allows the process to move forward.

Your Promptness in releasing the NOA for the EIS will allow this important regional development project to move forward.

Sincerely Yours,

Ken Blackwood
CEO/President

Jonathan Rouis
Legislator, District 4
Vice Chairman

845) 794-3000 EXT.3309
FAX: (845) 794-0650

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Testimony before the United States Senate Committee on Indian Affairs Committee Hearing
October 4, 2007

Hearing on Interior Department: Land into Trust Applications, Environmental Impact Statements, Probate, and Appraisals and Lease Approval Backlogs at the Interior Department

Thank you for the opportunity to present this statement for the record of the hearing on the backlog of fee-to-trust applications at the Department of Interior ("Department")

The Village of Monticello ("Village"), Town of Thompson ("Town"), and Sullivan County ("County") jointly want to take this opportunity to submit written testimony to the Committee on our most pressing economic development priority. The St. Regis Mohawk Tribe ("SRMT" or "Tribe") has satisfied all of the substantive criteria and requirements necessary to convert the 29.31 acre site of the Monticello Raceway into an Indian casino project in accordance with Section 20 of the *Indian Gaming Regulatory Act* ("IGRA"), Public Law 100-497. The Village, Town, and County all support the immediate transfer of this site into federal trust status under Section 5 of the Indian Reorganization Act or through any other procedure used to transfer land into federal trust status. We note that agreements are already in place to address and mitigate impacts from this project. Furthermore, on December 21, 2006, the Department issued a "Finding of No Significant Impact" ("FONSI") indicating the Tribe has met the federal regulations for environmental review to have the land taken into trust status. On February 18, 2007, New York Governor Elliot Spitzer issued the "concurrence" to the April 2000 favorable Section 20 Secretarial determination, thereby making site eligible for gaming activities and completing all of the requirements of IGRA's Section 20 process.

By all appearances, the Town, Village, County, the State of New York and the Tribe have become victims of our own success. Apparently, by working together to satisfy all of the requirements of the IRA and IGRA, we have placed at least one of the highest-ranking officials in the Department in the position of having to finalize an off-reservation gaming application. It appears this official had hoped to avoid such a decision during his tenure at the Department.

Governor Elliot Spitzer has joined the Town, Village, and County in appealing to Interior Secretary Dirk Kempthorne to approve the Tribe's fee-to-trust application. Members of New York's congressional delegation, including the Senior Senator from New York, Chuck Schumer, and our local Congressman, Maurice Hinchey, have also called on the Secretary to issue a final decision without further delay. But these calls have gone unheeded. We hope the Committee's hearing will provide the impetus for further *congressional* action on this application.

We greatly appreciate the decision to hold this hearing to call attention to the significant number of trust applications that are languishing at various stages in the Bureau of Indian Affairs ("BIA") approval process. It is our understanding that the authority to approve most trust applications is delegated to the BIA's Regional Office level or, in some cases, it is retained within the Office of the Assistant Secretary for Indian Affairs. We understand the Assistant Secretary Carl Artman will

represent the Department at this hearing to provide testimony and respond directly to concerns raised by Chairman Dorgan and Vice-Chairwoman Murkowski about delays occurring within his office or in the Regional BIA Offices that are under his supervision. With respect to the trust application for the Monticello Project, however, Assistant Secretary Artman is not in a position to provide any information or insights to the Committee about the unwarranted the delay in the Tribe's application. First, Assistant Secretary Artman has recused himself from this matter and, more important, by all appearances, the delay results from Secretary Kempthorne's reluctance to allow an off-reservation gaming project to come to fruition during his tenure as Secretary. Accordingly, it does not appear that any action will be taken on this application until Congress makes its will known directly to Secretary Kempthorne, either through calls and written requests by members of this Committee to demand that he issue a final decision on the application or collectively through an action by this Committee, such as an oversight hearing directed exclusively at applications that are being delayed solely by the Secretary. It may also be necessary for the entire Senate or the Congress to take action to overcome the Secretary's apparent intransigence. It is our understanding that legislation establishing the trust status of land is often developed while the administrative process is ongoing. We believe that such legislation is warranted in this case. At a minimum, Congress should enact a law setting a 60 or 90-day time-frame for the Secretary to issue a final decision.

The Village, Town, County, and State of New York have no immediate recourse for the delay in this project except to ask Congress to intervene directly. It is our understanding the Secretary Kempthorne has refused to even meet with the Tribe to discuss this application or to provide any indication of why he is delaying a final decision. Based on our experience with the Tribe, we can assure this Committee that the Tribe will work diligently to address any concerns the Secretary may have; although our communities do firmly believe that all concerns about this project have been fully addressed.

One of the reasons the Monticello Project enjoys such widespread local support is the extensive opportunity to analyze the impacts of the development and the Tribe's willingness to consult with the State and local governments about any possible impacts. This level of coordination reflects the number of environmental reviews that have occurred over the more than ten years that have elapsed since this project was first proposed by the Tribe. While the Tribe's current trust lands are located outside of Sullivan County, they have a well-established historic connection to this area that is beyond question. Our communities embrace that history, the Tribe's connection to this area's past, and the Tribe's desire to be a vibrant part of our future.

Without the approval of the Tribe's application, we are very concerned that the future of our region is unnecessarily bleak. As you know this area was the center of the famous Catskills resort region, where hundreds of hotels flourished. The tourism industry built a strong middle class, vibrant economy and was an economic engine for not only our region but the entire State of New York. However, the hundreds of hotels that once dotted the Town and County no longer exist. They decayed and vanished, and with them, so did our area's economy.

The potential of rebuilding our tourist economy is now something that can become a reality. The Tribe has worked diligently with us to enter into local service agreements for sewer and water services and to mitigate any local impacts. These agreements have been in place for several years. In 2001, the State Legislature provided the necessary authority for the Governor to make Indian gaming the centerpiece of revitalizing our region. Over the years we have written to the Bureau of Indian Affairs, Department of Interior, and our local federal and state elected officials to voice our support for the Tribe. We cannot say this often enough – WE WANT THE SECRETARY TO PROVIDE THE FINAL APPROVAL OF THE FEE –TO-TRUST APPLICATION TO ENABLE THE TRIBE TAKE OVER THE MONTICELLO SITE AS AN INDIAN CASINO.

We are now at what should be the end of a long and difficult process for bringing this project to fruition. We believe, however, that the process has been very beneficial because it brought citizens of all persuasions – pro-gaming and anti-gaming – to the table to talk and to provide vital input. In short, we feel that participation in the NEPA process was a good use of County resources. Officials of Sullivan County have enthusiastically participated in the NEPA activities related to these proposed Indian gaming lands because we have long been in favor of bringing gaming to the Catskills region of New York. We supported legislation that was enacted by the State legislature to allow Indian casinos in Sullivan County because we believe that tribal gaming would be economically beneficial and would help restore the region to its former glory as a tourism destination.

In particular, there is no question that Tribe's application represents the best hope for immediate revitalization of our communities for a number of reasons. Most notably, it is the only existing application that is the subject of a favorable Secretarial determination under Section 20 and it is also the only application with a governor's concurrence. It is also the only application that has completed **all** necessary environmental review. Finally, the project makes use of an existing gaming facility. For these reasons, we urge the Committee and its members to raise this issue at the highest level of the Department to bring an end to this unnecessary and damaging delay.

Thank you again for scheduling this hearing and providing the opportunity to submit this testimony.

October 17, 2007

US Senate Indian Affairs Committee

RE: **RE: Written Testimony Supporting North Fork Rancheria NOA**

Dear Committee Members,

As chief law enforcement officer of the County of Madera, my job is not to make the laws but to see to the speedy, effective, and fair enforcement of the laws on the books. I cannot choose when and how to apply certain laws but must be consistent, clear, uniform, and impartial in enforcing all laws - at all times and to all people.

I believe the Bureau of Indian Affairs (BIA) has a similar responsibility to enforce and execute the applicable laws, rules, regulations that govern the work of that agency in a timely manner, without prejudice, confusion, or delay. In this light I am writing to request the BIA to release the long-overdue Draft EIS for the North Fork Rancheria project without future delay.

Further delay of Draft EIS penalizes not only this Tribe, which has been above board in all respects and played consistently by the letter and spirit of the law, but also the citizens and governments of Madera County.

The North Fork Rancheria and all local jurisdictions have collaborated specifically to address public safety issues surrounding the proposed construction of the Tribe's hotel and casino resort. In light of the City and County of Madera's and City of Chowchilla's support for the project, the Tribe's proposed public safety funding and own internal security plans, and my department's experience with other local Indian gaming operations, I am confident that the positive benefits of this project will greatly outweigh any negative impacts.

Good paying jobs, business opportunities, and charitable and public funding will help to keep people off the streets and drugs and out of gangs and jails. Further delays in the authorization of the North Fork Rancheria Draft EIS and project do not serve the long-term welfare and safety of our community.

Sincerely,

John P. Anderson,
Madera County Sheriff

130 S. Second Street
Civic Center Plaza
Chowchilla, CA 93610
(559) 665-8615 - (559) 665-7418 fax
www.ci.chowchilla.ca.us

October 17, 2007

US Senate Indian Affairs Committee
Email: testimony@indian.senate.gov

RE: Written Testimony Supporting North Fork Rancheria Notice of Availability

Dear Committee Members,

The City of Chowchilla has a direct and immediate stake in the development of the proposed North Fork Rancheria destination hotel and casino resort in Madera County. As Mayor of the City of Chowchilla, I am writing to encourage the Bureau of Indian Affairs to allow the Environmental Impact Statement process for this project to continue in a timely and orderly manner by immediately releasing the draft EIS.

In conjunction with the early EIS Scoping activities, our City Council considered the project at its Special Meeting of May 5, 2005 and gave consensus that we were in favor of the project and its location. I am surprised and confused to learn that over two years later, the Draft EIS has still not been release to the community by the BIA.

Although not officially requested a "Cooperating Agency" by the BIA, the City of Chowchilla has been involved in and monitored the EIS process given the potential economic, social, and environmental impacts of the project to Chowchilla. Further delay of the Draft EIS hinders our City's ability to review, analyze, and plan for the potential impacts. In addition, the delays stall economic benefits to our community in the form of jobs, vendor opportunities, and charitable and public funding.

The North Fork Rancheria Tribe has played by the rules and worked constructively and transparently with local jurisdictions and community groups to build a project that will serve the needs of this region and its citizens. Private investment endeavors such as these should be rewarded rather than penalized.

Now it is the turn of the federal government to fulfill its roles and responsibilities by following the standard rules and procedures governing the EIS process for Indian gaming and land-into-trust projects such as the North Fork Rancheria resort.

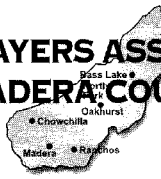
Please immediately release the NOA for the EIS and allow this important regional development project to move forward.

Sincerely,

Jerry L. Belton
Mayor

C: City Council Members
Nancy Red, City Administrator
Jacquie Davis-Van Huss, *Tribal Chairperson, jvanhuss@netptc.net*
Charles Altekruse, *NFR Community Relations, caltekruse@caconsult.org*

TAXPAYERS ASSOCIATION OF MADERA COUNTY



Octover 18, 2007

To: testimony@indian.senate.gov

Re: **Written Testimony Supporting North Fork Rancheria NOA**

Delay in this process has had the following impacts on a community that strongly supports and needs the proposed project:

- Madera County and the region should be allowed, and indeed encouraged, to plan and execute their economic development and land use futures in cooperation with the aboriginal Indian tribe without unnecessary, unexplained delay by the federal government.
- The proposed resort represents a cornerstone economic development project for a region that needs more jobs, business opportunity, and community funding. The resort will generate roughly $100 million in annual local economic benefits and activity. Accordingly, each day of delay costs Madera County and the region roughly $275,000 in lost financial resources.
- Cancellation or further postponement of this anchor project could delay ancillary growth spawned by the development and put at risk number several key local developments
predicated upon the successful completion of the NFR project. Such events could exacerbate systemic imbalances already within the local economy as well as a regional economic slump caused by a recent slowdown in the local housing and construction industries.
- The project has garnered unparalleled community support among Indian gaming projects; with more than 4,000 individual support signatures and endorsements from every Chamber of Commerce in the area. In addition, the Tribe has negotiated Memoranda of Understanding (MOU) with the City and County of Madera as well as the Madera Irrigation District (MID). These voluntary inter-governmental/agency agreements will generate nearly $100 million over 20 years for community projects and to proactively address and mitigate impacts of the proposed project (in addition to mitigation measures addressed in the yet undisclosed EIS). Delays in this project denies the community access to much needed funding for an array of services such as public safety, education, economic development, traffic engineering, charitable giving and more.

Sincerely,

Jim Cobb, President

8805 N. Highway 41 • Fresno, CA 93720 • (559) 449-0383 • Fax 431-6624

October 17, 2007

RE: Written Testimony Supporting North Fork Rancheria NOA

I don't get it, after a two and one-half year process, on February 2, 2007, the draft North Fork Rancheria EIS was completed. A draft Notice of Availability was circulated to Department officials for signature as required under BIA policies. This process should have taken four to six weeks, after which the NOA announcing the issuance of the draft EIS and a public comment period is published in the Federal Register. Yet here we are nine months later and the NOA remains unpublished, and yet we have no clue as to why the delay, I don't get it.

The Business Coalition for a Better Madera strongly supports the North Fork Rancheria Project yet we are unable to provide public testimony and so are other members of our community. This project would provide a much needed long term economic impact to our community.

The proposed project represents a cornerstone economic development project for a region that needs more jobs, business opportunity, and community project funding. The project will generate $100 million in annual local economic benefits and activity. As such each day of delay costs Madera County and the region $275,000 in lost financial resources.

The North Fork Rancheia Tribal Council has negotiated Memoranda of Understanding with the City of Madera, County of Madera, and Madera Irrigation District. We have embraced and support this project at the local where it counts the most. Additionally every local Chamber of Commerce supports the project.

The impacts on the North Fork Rancheria Tribal Citizens has been detrimental at several levels. First and foremost the opportunity to break the cycle of chronic high poverty and high unemployment that plaques both the Tribe and the community as a whole. The continued delays create heightened concerns and tensions that this opportunity will not be realized for the betterment of the Tribal Citizens. This delay has also cost the Tribe millions of dollars in lost revenues from the project, based on BIA working timelines. The Tribe has been nothing short of cooperative and willing to discuss the project with the community. Collaborations have been built with local community groups, community issues have been mitigated. You would be hard pressed to find anything else the Tribe might have done to bring their project to the forefront in our community.

Whatever reasons BIA may have in purposely delaying this project and which are unknown to us are simply inexplicable, and we simply just don't get it. We will all benefit from this project, I urge you to move the NOA forward.

Respectfully,

Herman Perez, Co-Chair
Business Coalition for a Better Madera
1108 Pinewood Ct.
Madera, CA 93637

Gary Gilbert, Former District 5 Supervisor
Madera County, California

Supporting Testimony
for the Committee on Indian Affairs
United States Senate

OVERSIGHT HEARING on
Backlogs at the Department of the Interior:
Land into Trust Applications; Environmental Impact Statements;
Probate; Appraisals and Lease Approvals

October 19, 2007

Chairman Dorgan, distinguised members of the Committee, I appreciate the opportunity to provide supporting testimony in requesting the publishing a notice of availability of a draft environmental impact statement ("EIS") for a tribal project, (North Fork Rancheria) in Madera County.

This is just one of several steps that hopefully will reverse the legacy of poverty, unemployment and neglect on our Native Americans. If this project is ultimately approved, the North Fork Mono's then would have a tribal goverment with the necessary resources to provide essential services such as education, housing, health care, day care centers and elder care programs for it's over 1,600+ tribal citizens.

Opportunities for the North Fork Mono people will be boundless as they strive for economic self sufficiency. Please release their draft environmental review documents so their first step may be taken.

Gary Gilbert
34950 Wintergreen Loop
North Fork, CA 93643
559-877-6500
gggilbert@netptc.net

October 18, 2007

US Senate Indian Affairs Committee

RE: **RE: Written Testimony Supporting North Fork Rancheria NOA**

Dear Committee Members,

As Executive Director of the Fresno Area Hispanic Chamber of Commerce (FAHCC), I am writing in support of the proposed North Fork Rancheria development project and to urge the BIA to publish the Notice of Availability (NOA) for the Draft EIS for this project without further delay.

By promoting jobs, business opportunity and community investment the North Fork Rancheria project will directly support our Chamber's mission to "*To Improve and Strengthen Individuals, Business and Community.*"

- ***Jobs*** to help citizens buy locally, raise families, purchase homes, pay taxes, save, and invest in their futures.
- ***Business opportunity*** to build stronger local businesses, governments and institutions.
- ***Community investments*** to enhance quality of life and build a stronger social fabric.

We support the North Fork Rancheria project because they have proven to be good neighbors, played by the rules, and worked constructively and transparently with all local governmental entities and many community groups like ours to build a project that will truly serve the needs of this region and its diverse citizens. Private investment projects like this should be rewarded rather than penalized by unreasonable and unwarranted bureaucratic delay.

Please immediately release the NOA for the North Fork Rancheria Draft EIS and allow this important regional development project to move forward.

If you have any questions please do not hesitate to contact the office at (559) 222-8705.

Sincerely,

Dora Rivera
President & CEO
FAHCC

COLDWELL BANKER
H & L REAL ESTATE

322 W YOSEMITE AVE.
MADERA, CA 93637
BUS. (559) 673-9178
FAX (559) 673-2114

October 18, 2007

To whom it may concern:

Re: Supporting North Fork Rancheria NOA

My concern is about the delay of the draft for North Fork Rancheria NOA. I support getting this completed for several reasons, economic impact on our community and business.

I'm asking for a decision to be made and action taken to complete this task. We need the jobs and income from this economic opportunity that the North Fork Rancheria NOA can provide.

Thank you

David Lee
322 West Yosemite Avenue
Madera, CA 93637
(559) 232-5316

10/18/2007

Dear Senators

I urge you to release the Notice of Availability for the North Fork Mono Indian Rancheria (Madera, CA) I understand that their Environmental Impact Report has been finished for some time now and the NOA needs to be released so the project can move forward. I support Supervisor Bigelow's testimony and urge you to proceed with this item.

Sincerely

Christopher Mariscotti

Dear Sirs and Madams:

I am a life-long resident of Madera and represent three generations of a family that has remained committed to the well-being of this community for nearly 100 years. Our community has been good to us and we in turn have done much to support it, through philanthropy and as well as the creation of countless jobs.

Our town has grown immensely over the years but in spite of this growth our area still remains economically depressed, with unacceptable levels of unemployment and poverty. We need more jobs and we need them outside of our traditional, low paying agricultural base. The North Fork Rancheria resort project would help greatly in strengthening and diversifying our economy by creating hundreds of descent paying nonagricultural jobs. Also, a project of this magnitude would add additional and far reaching benefits throughout the entire area beginning with construction process and continuing on as the resort does business with local vendors and suppliers.

I urge you to restart the approval process for this project that has been stalled by the lack of action on the part of the U.S Interior Department/BIA. Everyday that they withhold the Draft EIS costs our community the benefits that this project will bring.

Thank you for your consideration.

Sincerely,

Chris DaSilva
3001 Forest Lane
Madera, CA 93637

Thank you all for your continued support and assistance. We look forward to being partners with the City of Chowchilla and its citizens, civic groups, and institutions for a long time.

With gratitude,

Charlie Altekruse
North Fork Rancheria Community Relations

MADERA COUNTY EDC ECONOMIC DEVELOPMENT COMMISSION

October 17, 2007

US Senate Indian Affairs Committee

RE: **RE: Written Testimony Supporting North Fork Rancheria NOA**

Dear Committee Members:

As Executive Director of the Madera County Economic Development Commission, I am writing today in support of the North Fork Rancheria Entertainment and Gaming Resort. As addressed in the recent October 4, 2007 Oversight Hearing at the U.S. Senate Committee on Indian Affairs, this project has been delayed because of backlogs at the U.S. Department of Interior, Bureau of Indian Affairs.

Our mission at the EDC is to position Madera County – which is at the heart of California's Central Valley – as an economically viable and vibrant area through a multifaceted and diversified economic base. The North Fork entertainment and gaming resort offers the type of economic opportunity and diversity to our community which would include thousands of new jobs and enormous new career opportunities in a traditionally agricultural area.

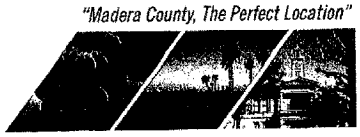
The resort, to include not only gaming, but also retail stores, a hotel, spa, restaurant and entertainment options is an example of this economic diversification – in one package. In addition to the more than 1,400 new jobs expected, it would also have a ripple effect throughout the area by indirectly supporting other local businesses and the growth of new ones. Indeed, we believe that this resort could be a cornerstone for economic development throughout the region, generating roughly $100 million in annual local economic benefits and activity. Accordingly, each day of delay costs Madera County and the region roughly $275,000 in lost financial resources.

On behalf of the EDC, we respectfully request that the Bureau of Indian Affairs immediately release the Notice of Availability (NOA) for the Tribe's Environmental Impact Statement (EIS) to allow this important regional development project to move forward so we can all be part of a growing and vibrant Madera County.

Sincerely,

Bobby Kahn
Executive Director
Madera County Economic Development Commission

"Madera County, The Perfect Location"



2425 West Cleveland Ave., Suite 101 • Madera, CA 93637
559-675-7768 • fax 559-675-3252 • www.maderacountyedc.com

To whom it man concern;

I have been a local business owner for over 14 years in Madera, California. I have lived in Madera all of my life and with my wife of 17 years we are raising our three children here. My concern with our community lately has been our economy. Increasing population means more homes and businesses, hopefully we can continue with more bond support to increase our school growth. For all of this expansion in Madera we must have more local jobs to keep the revenue local.

The North Fork Rancheria Casino Project in Madera will do just that! It has been over 2 years since any progress has been made. Environmental Impact Reports have not been made public. The local community is desperate for progress and revenue and our future as a growing community has been put on hold due to these delays. I believe the Tribe has been negatively impacted and also denied future growth.

Other surrounding communities have been given the opportunity to grow and succeed. It is my opinion Madera has been "put on hold" due to the delay of the Federal Government's U.S. Interior Department.

Sincerely,
Andy Medellin, Owner
Andy's Sports & Design
225 S. Pine St. #104
Madera, Ca. 93637

Andy Medellin
Andy's Sports & Design/Designer Signs
225 S. Pine St. #104
Madera, Ca. 93637
559-674-3661/559-675-3664

Agri-tourism • Agri-education • Agri-tainment

To: Marilyn Bruce
Indian Affairs

From: Darren Schmall
Pizza Farm Agri-tainment Company

Re: Written Testimony Supporting North Fork Rancheria NOA

I am a life-long resident and business owner in Madera County. Our community has struggled for many years with high unemployment, low paying jobs, impoverished schools and lack of infrastructure. The proposed Resort by the North Fork Rancheria will help address these issues that our community can not solve on its own. The MOU between the North Fork Rancheria and the City and County of Madera contributes nearly $100 million over the next 20 years. This is an extraordinary amount of money that our local government could never generate on its own. Our community also has several other major developments hinged on this project. Due to the delays in releasing the NOA, these other projects are on hold. Developers will not wait forever and could pull their projects, if they do not see progress on the Resort. We urge you to move forward on the release of the NOA immediately, as our community continues to suffer from these delays.

In addition, the North Fork Rancheria residents are being denied the opportunity to help their own people, due to the delay in releasing the NOA. The Tribe is losing millions of dollars in lost revenue from the Resort, as well as paying interest on borrowed money for all EIS work that has already been completed. Its members are doing without funding for health care, education programs and job training because of lack of revenue. The Tribe has worked diligently with the community and has offered on-going long term investment in the community, which NO OTHER tribe in Madera County has done. They have been transparent in their due diligence and have over 4000 letters of support for the project from local residents. The members of the North Fork Rancheria deserve the right to become self-sufficient and to better the lives of its members and our community by being allowed to move forward with the NOA.

27877 Avenue 8 • Madera, CA 93637
(559) 674-2391 • Fax: (559) 661-2172
www.ThePizzaFarm.com • email: pizzafarmer@cobbranch.com

Enterprise Rancheria

Estom Yumeka Maidu Tribe

1940 Feather River Blvd., Suite B
Oroville, CA. 95965-5723

Ph: (530) 532-9214
Fax: (530) 532-1768
Email: info@enterpriserancheria.org

Ms. Glenda Nelson, Chairperson
Estom Yumeka Tribe of the Enterprise Rancheria
(aka Enterprise Rancheria of Maidu Indians of California)

Written Testimony
Before the Committee on Indian Affairs
United States Senate

OVERSIGHT HEARING on
Backlogs at the Department of the Interior:
Land into Trust Applications; Environmental Impact Statements;
Probate; Appraisals and Lease Approvals

October 4, 2007

Introduction

I write on behalf of the Estom Yumeka Tribe of the Enterprise Rancheria ("Tribe") to share with the Committee our deep concern with the Department of the Interior's ("Department") delay in publishing a Notice of Availability ("Notice") of a draft environmental impact statement ("EIS") in the Federal Register. The purpose of the Notice is simple and statutorily mandated under the National Environmental Policy Act ("NEPA") -- to alert the public of the availability of the draft EIS and to provide guidance on how to review and submit comments on this important public document. The Department's delay in processing this essential public notice for surrounding communities and stakeholders in the Tribe's project is detrimental to our Tribe and community.

The Bureau of Indian Affairs ("BIA") is the agency responsible for preparing the draft EIS for a gaming related trust acquisition proposed in 2002 by the Tribe. The proposed acquisition would provide the Tribe the opportunity to pursue economic development for nearly 800 tribal members and provide an equitable remedy for tribal lands unjustly taken without the consent of, and compensation to, the Tribe when Enterprise No. 2--one of our two 40-acre parcels--was sold to the State of California in 1964 and subsequently inundated by Lake Oroville. The proposed 40-acre parcel is situated in a voter-approved sports and entertainment zone within our ancestral territory in Yuba County, California. The project is generally supported by the local community. Indeed, Yuba County and the City of Marysville have both entered into binding mitigation agreements with the Tribe.

In March 2003, the BIA began review of an administrative draft environmental assessment

(EA) which the Tribe initiated a year earlier. After submitting a revised administrative EA to the cooperating agencies, the BIA published a third and final draft EA in July 2004. However, rather than issuing a Finding of No Significant Impact ("FONSI"), the BIA instead decided to prepare an EIS.

On May 20, 2005, the BIA issued a Notice of Intent to prepare the draft EIS and conduct a scoping process. Following publication of the scoping report, an administrative draft EIS was completed in October 2006. After the draft was twice revised, it was sent to the cooperating agencies for comment. A fourth administrative draft was prepared in response to the cooperating agency comments and issued in April 2007.

On April 23, 2007, the BIA began distributing the draft Notice to Department's officials for their approval and signature. Since then, the Tribe understands that all signatures but one have been gathered for the Notice and, after some slight changes to the April draft, that the draft EIS is ready for publication. Despite recent efforts by the Tribe to secure the final signature, the Notice remains unpublished. Neither the Tribe nor any other cooperating agency has received any explanation from the Department on the reasons for the delay in publishing the public notice.

The Tribe has now have been involved in the environmental review process for over five years. The cost to the Tribe from the Department's unexplained delay is significant. The Tribe is responsible for repayment of all expenditures related to the trust acquisition, including over a million dollars spent to date for the environmental review. Every week of delay in notifying the public that the draft EIS is available for their review results in the Tribe incurring thousands of dollars in additional interest expenses alone for all related project development expenses, not just costs associated with the environmental review aspect of the project. The delay by the Department in providing notice to the public has also cost the Tribe tens of millions of dollars in lost revenues from the proposed facility.

In addition to the financial costs, there is another equally important cost to the Tribe arising out of this delay by the Department. The goodwill which the Tribe has worked hard to foster within the local community is at stake and being jeopardized. Throughout this lengthy fee to trust process, the Tribe has been careful to establish reasonable expectations as well as openness and transparency in its dealings with local governmental representatives, business and community leaders, and Yuba County residents. While this community has shown a willingness to accept any number of reasonable delays in the NEPA review process, quite frankly, it will become increasingly difficult to explain the federal government's delay in publishing the Notice, a simple ministerial step providing the public and interested parties the green light to exercise their right to review and comment on the draft EIS. The Tribe is placed in the untenable position in which it must offer some explanation to interested parties when the Department itself has provided no justification for its delay.

As the Tribe stated in the attached letter to the Assistant Secretary, publication of the Notice of Availability in the Federal Register is not a decision-making document; it is simply a public notice of the draft EIS's availability for review and comment. It is two pages in length and, as required by the BIA's own NEPA Handbook (30 BIAM Release No. 9303, 6.3(l)), contains a brief description of the proposed action and alternatives, instructions to the public for submitting comments and attending a public hearing, and a closing date for the receipt of comments. In short,

the Notice is a small but critical step to ensure a transparent public process. In the Tribe's case, a draft of this simple, but important, public notice was prepared six months ago, but has not been acted upon by Department officials.

Although the Tribe's project has earned considerable community support, the failure of the Department to exercise the purely ministerial act of publishing a Notice of Availability and bringing to a halt the environmental review process under NEPA goes far beyond the implications of any particular project. NEPA requires federal agencies to make a series of evaluations and decisions that anticipate adverse effects on environmental resources, and regardless of the level of support for this or any other tribal project, it is incumbent upon the lead agency to follow the law and provide governmental and nongovernmental agencies and the public timely opportunity to review and comment throughout the environmental review process. Otherwise, the lead agency comes across as being above the law while tribes and local communities and governments are left feeling frustrated and powerless.

At its core, NEPA is a mandate for informed, democratic decision making that uniquely involves public comment and participation. By arbitrarily failing to publish, within a reasonable time frame, Notice of the completed draft EIS, the Department is violating its own policies and failing at one of its most basic duties. The Department's own policies state that it is Department policy: "To the fullest practicable extent, to encourage public involvement in the development of Departmental plans and programs through State, local, and Tribal partnerships and cooperative agreements at the beginning of the NEPA process, and to provide timely information to the public to better assist in understanding such plans and programs affecting environmental quality in accordance with the CEQ Regulations." Accordingly, we respectfully submit that the Department explain why it has abandoned its own well-reasoned and legitimate policy with respect to the NEPA notice in question and when the Tribe, Yuba County, and other stakeholders in the project can expect this federal agency to comply with NEPA's public notice mandates.

Thank you for the opportunity to submit this testimony.

Sincerely,

Glenda N. Nelson

Glenda Nelson
Chairperson

Encl.

Enterprise Rancheria

Estom Yumeka Maidu Tribe

1940 Feather River Blvd., Suite B
Oroville, CA. 95965-5723

Ph: (530) 532-9214
Fax: (530) 532-1768
Email: info@enterpriserancheria.org

October 15, 2007

Via Facsimile (202) 208-5320 and Overnight Mail

Carl J. Artman
Assistant Secretary – Indian Affairs
U.S. Department of the Interior
1849 "C" Street, NW, Room 4160
Washington, D.C. 20240

Re: Applicant Request to Publish Notice of Availability for Draft EIS Pursuant to 40 CFR 1501.8 and 516 DM 2.7.

Dear Mr. Artman:

As you know, the Estom Yumeka Maidu Tribe (Tribe) has requested that the Secretary of the Interior (Secretary) take into trust 40 acres of land in unincorporated Yuba County (Yuba Site) for the development of a casino/hotel resort. Prior to making a decision on the Tribe's land into trust application, the Bureau of Indian Affairs (BIA) as the responsible federal agency is required to comply with the National Environmental Policy Act (NEPA).

In accordance with NEPA, the BIA has decided to prepare an Environmental Impact Statement (EIS) for the proposed action after first preparing an Environmental Assessment (EA). The NEPA process began with the preparation of the EA, which began in August, 2002, over 5 years ago. During that time, the BIA has accomplished the following NEPA-related tasks:

- Reviewed an administrative draft EA (first draft dated March 2003);
- Reviewed a revised administrative draft EA and submitted EA to Cooperating Agencies for review (second draft dated July 2003);
- Published a further revised EA (the third and final draft dated July 2004);
- Upon consideration of public and agency comments and after consultation with the Tribe, the BIA decided to prepare an EIS and issued a Notice of Intent to do so (May 20, 2005);
- Conducted a scoping process for the EIS (including a public hearing which took place on June 9, 2005);
- Published a "Results of Scoping" report (dated April 2006);
- Prepared an administrative draft EIS (first draft dated October 2006);
- Prepared a revised administrative draft EIS (second draft dated February 2007);

- Prepared a revised administrative draft EIS, which was submitted to the Cooperating Agencies (third draft submitted to Cooperating Agencies in February 2007);
- Prepared a revised administrative draft EIS in response to Cooperating Agency comments (fourth draft dated April 2007);
- BIA – Pacific Region drafted a Notice of Availability (NOA) and distributed it among Departmental officials as part of the Department's surname process (distribution of the NOA began on April 23, 2007); and
- Continued to review the draft EIS during the surname process (which has been taking 2-3 months over the past few years), directing its consultant (Analytical Environmental Services) to make slight revisions to the EIS (the fifth and final draft EIS is dated August 2007).

Unfortunately, although the draft EIS has been complete since April 2007 (with slight changes made a couple months ago), and the Tribe understands that the NOA surname process has since been completed, the NOA has not yet been published by the BIA in the Federal Register. The ongoing delay in what can be fairly characterized as a simple, ministerial act is troubling to our 792 tribal citizens; to local governmental entities, including Yuba County and the City of Marysville, each of which has entered into agreements to mitigate potential impacts of the project within their respective jurisdictions.

The Council on Environmental Quality (CEQ) NEPA Regulations require that agencies reduce delay through a number of methods, including establishing appropriate time limits for the EIS process. 40 CFR 1500.5. In addition, the CEQ NEPA Regulations require that an agency set time limits if an applicant for the proposed action requests them. 40 CFR 1501.8(a). The Department of Interior's departmental manual echoes these requirements, noting that "[t]ime limits are an important consideration and, when used diligently, can contribute greatly to a more efficient NEPA process. Bureaus are encouraged to set time limits of their own and to respond favorably to applicant requests for time limits and set them consistent with the requirements of 40 CFR 1501.8." 516 DM 2.7.

The Tribe understands that the BIA and its consultants have been working diligently to thoroughly comply with the requirements of NEPA, by circulating the EIS for internal review and preparing multiple revised administrative drafts for instance. However, the delay in the processing of the 3-page NOA is not furthering the requirements of NEPA, but is instead contradicting the requirement to reduce delay. **Thus, consistent with the CEQ NEPA Regulations and the Department of Interior's Departmental Manual, the Tribe is formally requesting that the NOA be published no later than November 19, 2007.** This would allow for an additional 4 weeks to publish the NOA and would bring the total time period for preparing/publishing the draft EIS to 2 years and 6 months.

We believe that this request is reasonable and provides more than enough time to complete the internal NOA review process, which is the final remaining step before the draft EIS can be published. Although it is our understanding that the surname process is complete, even if after almost 6 months there remains officials who need to review the NOA, such review should not be time consuming. The NOA is not a decision-making document; it is simply a public notice of the draft EIS's availability for review and comment. It is 3 pages in length and, as required by the BIA NEPA Handbook, contains a brief description of the proposed action and alternatives, instructions to the public for submitting comments and attending a public hearing, and a closing date for the receipt of comments. In short, it is a small but critical step to ensure a transparent public process.

The factors contained in the Departmental Manual and the CEQ NEPA Regulations for determining time limits either are inapplicable to the requested NOA timeframe (because they are related to the preparation of the EIS, not the review of a NOA) or weigh in favor of setting an expedient time frame. For example,

the Departmental Manual's reference to availability of personnel and funds is further defined to encourage the lead bureau "to assemble a sufficiently well qualified staff commensurate with the type of project to be analyzed to ensure timely completion of NEPA documents." 516 DM 2.7. The Tribe feels that the BIA has complied with this requirement and prepared a thorough draft EIS in a relatively timely manner. All that remains is the publication of this draft EIS, which has not occurred in a timely manner. Other examples of factors to consider related to the preparation of the EIS from the CEQ NEPA Regulations include the size of the proposed action, whether state of the art analytic techniques will be used, the time to obtain relevant information, the degree to which the action is controversial, and the number of persons and agencies affected. 40 CFR 1501.8(b)(1). These factors allow lead agencies to consider the need for more time to conduct the analysis (size of proposed action, state of the art analytic techniques, time to obtain information) and the need to review and respond to heightened public comments and interest in the action (degree of controversy, number of persons/agencies affected). Again, these factors are not relevant to a time limit for publishing the draft EIS because the draft EIS has already been prepared.

The only factors given by the CEQ NEPA Regulations not fully related to the preparation of an EIS are the potential for environmental harm and the degree of public need for the proposed action, including the consequences of delay. 40 CFR 1501.8(b)(1). The potential for environmental harm is not relevant to the publication of the draft EIS, because the Department is not making a decision on the proposed action by merely publishing the draft EIS. With that said, we understand that the draft EIS concludes that the proposed action would result in a less than significant impact on the environment after the implementation of specified mitigation measures. Further delay of the NOA, however, would result in delaying the benefits to the region's economy and the public's right to consider and comment on the environmental consequences of our proposed resort. Further delay also delays the economic recovery and self-sufficiency which we are seeking for our tribal citizens through the approval of the proposed action.

We appreciate the thorough and diligent efforts by the BIA and the Department in preparing a draft EIS that fully satisfies the requirements of NEPA. However, the Tribe is concerned that the requirements of NEPA are being undermined by the unnecessary delay of this draft EIS' publication. Thus, we respectfully request that the draft EIS be published no later than *November 19, 2007* in order to reduce further delay. We would very much appreciate your prompt consideration of this request. If you would like to discuss further, please do not hesitate to contact me at (530) 532-9214 or the Tribe's legal representative, John Maier, at (510) 835-3020.

Sincerely,

Glenda Nelson
Tribal Chairperson

cc: George Skibine
John Rydzik
John Maier

Madera Chamber of Commerce
120 North E Street
Madera, California 93638
Telephone (559) 673-3563
www.maderachamber.com

October 17, 2007

Subject: Written Testimony Supporting North Fork Rancheria Notice of Availability

Members of the U.S. Senate Indian Affairs Committee:

The Madera Chamber of Commerce began working with the North Fork Mono Rancheria in support of their proposed destination resort and gaming facility in Madera in the year 2004. It is recognized that any development like this takes proper planning and time. Respectively, Madera County and City Governments have completed their due process with efficiency and in a timely matter to move this highly supported project forward. Our community has overwhelmingly supported the North Fork Mono Rancheria's venture and the final approval has been highly anticipated. There was always a local understanding of the process and time it takes for a project such as this to come to fruition through the federal level. It is said that good things come in time, but the timing of the federal process has experienced an unreasonable delay, one which should not be considered acceptable.

It was my understanding after I attended a Scoping Meeting on November 15, 2004 held by the Bureau of Indian Affairs, that the federal process was well underway. In a scoping report presented by AES in July 2005, it was estimated that the draft EIS would be available for public review in early 2006 for a period of 45 days. During this 45-day public review period the BIA would conduct a public hearing which then would allow for the final EIS to be available in mid-2006. It would then be possible that within 30 days after making the final document available that a final decision could be rendered. This schedule was drafted as a result of comments made by the BIA at the November 15, 2007 Scoping meeting held in Madera. Further, past precedence of other Native American project approvals would certainly support this timeframe.

As I submit this testimony to you, it has been well over a year that the decision on the North Fork Mono Rancheria's project was expected. Reasonable delays are to be expected, but this setback by the BIA is not.

I believe that the U.S. Senate Committee can certainly understand the impacts this delay has caused for North Fork Mono Rancheria and the community of Madera in terms of economic development and future prosperity. The tribe has worked diligently in creating a collaborative partnership with our community for the future benefit of their tribal members and the citizens of Madera.

It is with respect, that I submit this written testimony on behalf of the Madera Chamber of Commerce, *urging your support* in the release of the draft environmental impact statement for the North Fork Mono Rancheria's development project; and to further support the testimony of Madera County Board of Supervisor Frank Bigelow presented to the U.S. Senate Committee on Indian Affairs on October 4, 2007 in Washington, D.C.

Respectfully submitted,

Debra L. Bray, President/CEO

October 18, 2007

US Senate Indian Affairs Committee

RE: **Written Testimony Supporting North Fork Rancheria NOA**

Dear Committee Members,

The Madera Branch of the National Association for the Advancement of Colored People (NAACP) supports the proposed North Folk Ranchcria development project and to urge the BIA to publish the NOA for this project without further delay.

The NAACP insures the political, educational, social and economic equality of minority groups and citizens of the United States. This project will bring needed jobs to the region. , stimulate economic growth that will generate financial resources that will benefit our schools, and charitable organizations throughout the community. Goods and services created from this project will enhance businesses and public services as well.

This project must be allowed to move forward immediately, the longer the project is delayed it cost millions of dollars, not only with the lost of wages that are so desperately needed, but every facet of the economic development of this community.

Please move the North Folk Rancheria EIS process along without further delay.

Sincerely,

Luther Slack
President Madera NAACP

Nora &
Associates Realty
"We Can Do It"
673-NORA (6672)
1816 Howard Road, Ste. 4 • Madera, CA 93637
Fax 661-7172

Moving this process and project forward will especially serve the needs of traditionally underserved segments of our community who stand to benefit most from the economic stability, job growth and community enrichment the project will promises. But average citizens and community organizations such as ours will benefit as well from the increased hospitality and entertainment options and charitable giving the project will bring – but only if the BIA allows the process to move forward!

Each day of delay costs the region nearly a quarter of a million dollars in lost wages and payroll, purchases of local services and products, and charitable and public funding stemming directly from the project. These costs are too high for a fast growing community such as Madera that desperately needs employment, business, and educational opportunity for our youth.

Please move the North Fork Rancheria EIS process along without further delay.

Sincerely,

Nora Salazar

Nora Salazar,
President

Latinas Unidas
1625 Howard Rd. Box 240
Madera, CA 93637

"Supporting Latina Women in Madera"

October 16, 2007
US Senate Indian Affairs Committee

RE: **RE: Written Testimony Supporting North Fork Rancheria NOA**

Dear Committee Members,

On behalf of Latinas Unidas, a non-profit community group promoting educational, business, and social opportunity for Madera's diverse and growing Latina community, we are writing in support of the proposed North Fork Rancheria development project and to urge the BIA to release the Draft EIS.

Moving this process and project forward will especially serve the needs of traditionally underserved segments of our community who stand to benefit most from the economic stability, job growth and community enrichment the project will promises. But average citizens and community organizations such as ours will benefit as well from the increased hospitality and entertainment options and charitable giving the project will bring – but only if the BIA allows the process to move forward!

Each day of delay costs the region nearly a quarter of a million dollars in lost wages and payroll, purchases of local services and products, and charitable and public funding stemming directly from the project. These costs are too high for a fast growing community such as Madera that desperately needs employment, business, and educational opportunity for our youth.

Please move the North Fork Rancheria EIS process along without further delay.

Sincerely,

Nora Salazar

Nora Salazar,
President

Latinas Unidas is a non-profit organization

WRITTEN QUESTIONS SUBMITTED TO CARL J. ARTMAN*

Backlogs

Question 1. What is the current backlog with land-into-trust applications (both on and off reservation); environmental impact statements; appraisals; and commercial lease approvals?

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*Responses to written questions were not available at the time this hearing went to press.

Question 2. Why is there a backlog with land-into-trust applications (both on and off reservation); environmental impact statements; appraisals; and commercial lease approvals?

Question 3. How many vacancies currently exist at the Department for positions that are involved in the approval of land-into-trust applications (both on and off reservation); environmental impact statements; appraisals; and commercial lease approvals?

Question 4. What is the Department doing to address the backlogs that exist?

Land Into Trust

Question 5. How does the BIA track the various land-into-trust applications? Is there a system in place that allows you to determine the status of any application that is pending in any Agency or Regional or Central office of the Department?

Question 6. Does any tracking system include any timelines, time targets or other measurement tools to ensuring that an application is being timely processed?

Question 7. You testified that there are 1,211 pending land into trust applications, but that 1,100 are not yet ripe for decision. Why are these 1,100 applications not ready for a decision?

Question 8. What is the process by which off-reservation land-into-trust applications are processed at the Department?

Question 9. You testified that regarding applications for off-reservation land-into-trust applications, there are currently 37–43 applications pending here in the Central Office, and that all that is left to do is for you or the Secretary to make a final decision on whether to approve them. What is taking so long to make those decisions and when can decisions on these applications be expected?

Question 10. Some tribal leaders have informed the Committee that Associate Deputy Secretary, Jim Cason, has made statements on several occasions to tribes asking why tribes want the Department to take land into trust for them when the Department ends up mismanaging the land and being sued by tribes for the mismanagement. Is this the view of the Department and BIA towards tribal land-into-trust applications?

Question 11. You testified that regulations governing land-into-trust applications for off-reservation gaming have been finalized and are pending final approval by the Administration before being published in the Federal Register. When will these regulations be published? Do you believe these regulations will help relieve the backlog?

Question 12. The Committee was informed that the Department sent letters to tribes informing them that Interior is implementing a new process for considering land-into-trust applications that involve gaming. Can you describe this policy and how it is being implemented?

Question 13. What is your view about the role local jurisdictions (cities, counties) should play in the land acquisition process—either for gaming or non-gaming purposes? (Senator Feinstein)

Question 14. In your view, what are the parameters that determine a tribe's historical connection to land sought to be placed in trust? (Senator Feinstein)

Question 15. Because of the time and expense involved in the effort to acquire new lands for casino projects, do you think that the Department or the NIGC should first determine whether particular lands are "Indian lands" under section 4 of IGRA, before the Department proceeds with a fee to trust application and the related NEPA process? (Senator Feinstein)

Question 16. When there is no time deadline, when, if at all, is an official required to make a decision on a completed application to take land into trust? Is there any requirement that the decision on a land-into-trust application be made in a reasonable time? (Senator Schumer)

Question 17. It appears that significant delay will serve to increase the cost of any project, thereby having the ultimate effect of making the project economically unsound. What effects might significant delays in decision making have on the costs of a project? (Senator Schumer)

Question 18. The St. Regis Mohawk Tribe of New York has submitted an application to have 30 acres of land taken into trust. It has completed all of its paperwork, enjoys broad support in its region and from the State, and in fact is the only tribe to have completed the two-part determination process under Section 20 of the Indian Gaming Regulatory Act. It is simply waiting for a final decision to be made. However, the Department of the Interior has failed to make a decision, or to indi-

cate a timeline for such. Is it, under these circumstances, appropriate it for DOI to defer the decision without approving or denying? What requirements are imposed on the Department with respect to acting on an application? Can it fail to act on an application indefinitely? (Senator Schumer)

Environmental Impact Statements

Question 19. How many Draft Environmental Impact Statements are pending at the Department? How long have these been pending and when will decisions be made on them?

Question 20. The Committee was informed that the Department has an internal policy that any Draft Environmental Impact Statements that are over a year old are "stale" and will need to be updated and reviewed further before the Department will issue them for public review and comment. Is this true? If so, what internal policies exist to ensure that these Draft Environmental Impact Statements are issued within a year?

Question 21. What is the Department's obligation to act in a timely manner regarding the NEPA process? Does the Department have the authority to delay ministerial actions, as it has delayed issuing the Notice of Availability on the environmental impact statement submitted with the application of the Stockbridge Munsee Tribe? (Senator Schumer)