

RESOLUTION OF THE TOHONO O'ODHAM LEGISLATIVE COUNCIL
(Submitting Comments on Department of the Interior After Acquired Trust Land Policies
and Regulations, and Opposing Restrictions on the Ability of Tribal Governments to
Acquire Land in Trust for Economic Development)

RESOLUTION NO. 10-480

1 **WHEREAS, the Tohono O'odham Legislative Council is vested with the power to administer land**
2 **and to "consult with the Congress of the United States and appropriate federal**
3 **agencies regarding federal activities that affect the Tohono O'odham Nation"**
4 **(Constitution of the Tohono O'odham Nation, Article VI, Section 1(i) and 1(j)); and**
5 **WHEREAS, as a direct result of federal policies designed to break up tribal governments and**
6 **Indian land bases, Indian land holdings in the United States fell from 138 million**
7 **acres in 1887 to 48 million acres in 1934, a loss that crippled tribes' ability to provide**
8 **employment and economic opportunities; and**
9 **WHEREAS, these nineteenth century policies were replaced by the land-into-trust acquisition**
10 **provisions of the Indian Reorganization Act of 1934 (25 U.S.C. § 465) and other land**
11 **acquisition authorities which authorize the Secretary of the Interior to acquire lands**
12 **in trust for the benefit of Indian tribes, thereby providing for the acquisition of land**
13 **bases that are essential to meet the needs of tribal governments, including economic**
14 **development; and**
15 **WHEREAS, although the United States Supreme Court recognized in *California v. Cabazon Band***
16 ***of Mission Indians*, 480 U.S. 202 (1987) that tribes possess the inherent authority to**
17 **conduct gaming without state regulation, in 1988 the United States Congress enacted**
18 **the Indian Gaming Regulatory Act ("IGRA"), which restricts tribes' independent**
19 **authority to conduct and regulate tribal gaming, and which limits tribes' ability to**
20 **game on lands acquired in trust after the date IGRA was enacted ("after acquired"**
21 **trust lands); and**
22 **WHEREAS, in 2006 when the DOI proposed new regulations, at 25 C.F.R. Part 292, to govern the**
23 **acquisition of after acquired trust lands, the Nation submitted official comments**
24 **stating that "Congress's broad recognition of land claim settlements in general**
25 **should not be narrowed by an administrative agency, thereby changing the meaning**
26 **of the statute" (Resolution No. 06-044); and**
27 **WHEREAS, the Nation likewise opposes "any amendment to the Indian Gaming Regulatory Act**
28 **that would further reduce tribal sovereignty and self-governance authority over**

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1 tribal matters such as the regulation and operation of tribal gaming.” (Resolution No.
2 06-044); and

3 **WHEREAS, on January 3, 2008 then-Assistant Secretary for Indian Affairs Carl Artman, without**
4 **advance notice to or consultation with tribes, issued a memorandum creating new**
5 **restrictions for tribes seeking trust lands for gaming purposes outside of existing**
6 **reservation boundaries (“Artman Guidance”); and**

7 **WHEREAS, the Artman Guidance was issued in direct violation of Executive Order 13175, which**
8 **directs the Department of the Interior and other federal agencies to consult with**
9 **tribes in formulating policies or taking actions that “have substantial direct effects**
10 **on one or more Indian tribes” or “on the relationship between the Federal**
11 **Government and Indian tribes” (Executive Order 13175, Section 1(a)); and**

12 **WHEREAS, on July 18, 2010 Interior Secretary Salazar issued a directive recommending a review**
13 **of the "current guidance and regulatory standards" used to make decisions for two-**
14 **part land-into-trust determinations under Section 20(b)(1)(A) of IGRA, 25 U.S.C.**
15 **2719(b)(1)(A); and**

16 **WHEREAS, on August 24, 2010 the Department of Interior initiated government-to-government**
17 **consultations with tribes on, among other things, (1) the January 3, 2008 Artman**
18 **Guidance; and (2) the need to revise portions of 25 C.F.R. 292, the Department’s after-**
19 **acquired trust lands regulations; and**

20 **WHEREAS, the Department’s promulgation or adoption of additional restrictions on land-into-**
21 **trust acquisitions would violate the Department of the Interior’s duty as a trustee to**
22 **carry out the trust acquisition provisions of the Indian Reorganization Act of 1934**
23 **and numerous other federal laws and settlements authorizing or directing the**
24 **Secretary of the Interior to take land into trust for the tribes’ benefit; and**

25 **WHEREAS, as a matter of law, the Department cannot create barriers that prevent the**
26 **implementation of the land-into-trust provisions within the Indian Gaming**
27 **Regulatory Act; and**

28 **WHEREAS, regulations and policies placing additional restrictions on land-into-trust**
29 **acquisitions also would undermine the federal government’s express commitment**

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1 to support the right to tribal self-government and self-determination (Executive
2 Order 13175, Section 2(c)).

3 **NOW, THEREFORE, BE IT RESOLVED that the Tohono O'odham Legislative Council:**

- 4 **(1) Calls on the Department of the Interior to repeal the Artman Guidance, which**
5 **creates additional, unjustifiable barriers to the tribes' ability to acquire land**
6 **into trust, pursue economic development, and provide fundamental services to**
7 **tribal members; and which was issued in violation of the Department's duty to**
8 **engage in meaningful government-to-government consultation with tribes.**
- 9 **(2) Opposes amendments to 25 C.F.R. Part 292 Subparts A and C that would further**
10 **restrict tribes' ability to acquire land in trust in accordance with the existing**
11 **structure of the Indian Gaming Regulatory Act or that would give state, local, or**
12 **nearby tribal entities authority to prevent a tribe from acquiring land in trust.**
- 13 **(3) Adopts the Tohono O'odham Nation's comments on the after acquired trust land**
14 **policies and regulations in substantially the form attached hereto and**
15 **authorizes and directs the Nation's Chairman to timely submit the Nation's**
16 **Comments to the Department.**

17 **The foregoing Resolution was passed by the Tohono O'odham Legislative Council on the 06TH Day**
18 **of DECEMBER, 2010 at a meeting at which a quorum was present with a vote of 2,595.50 FOR; -0-**
19 **AGAINST; -0- NOT VOTING; and [02] ABSENT, pursuant to the powers vested in the Council by**
20 **Article VI, Section 1 (i) and (j) of the Constitution of the Tohono O'odham Nation, adopted by the**
21 **Tohono O'odham Nation on January 18, 1986; and approved by the Acting Deputy Assistant**
22 **Secretary - Indian Affairs (Operations) on March 6, 1986, pursuant to Section 16 of the Act of June**
23 **18, 1934 (48 Stat. 984).**

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25 **TOHONO O'ODHAM LEGISLATIVE COUNCIL**

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28 _____
29 **Verlon M. Jose, Legislative Chairman**

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32 9 day of December, 2010
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ATTEST:



Evonne Wilson, Legislative Secretary

9th day of December, 2010.

Said Resolution was submitted for approval to the office of the Chairman of the Tohono O'odham Nation on the 9 day of December, 2010 at 5:08 o'clock, p.M., pursuant to the provisions of Section 5 of Article VII of the Constitution and will become effective upon his approval or upon his failure to either approve or disapprove it within 48 hours of submittal.

TOHONO O'ODHAM LEGISLATIVE COUNCIL



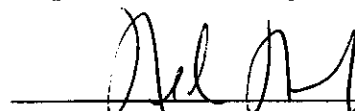
Verlon M. Jose, Legislative Chairman

APPROVED

on the 10 day of December, 2010

DISAPPROVED

at 10:35 o'clock, a.M.



NED NORRIS, JR., CHAIRMAN
TOHONO O'ODHAM NATION

Returned to the Legislative Secretary on the 10 day of

December, 2010, at 10:50 o'clock, a.M.



Evonne Wilson, Legislative Secretary

ACTION: SUBMITTING COMMENTS ON DEPARTMENT OF THE INTERIOR AFTER ACQUIRED TRUST LAND POLICIES AND REGULATIONS, AND OPPOSING RESTRICTIONS ON THE ABILITY OF TRIBAL GOVERNMENTS TO ACQUIRE LAND IN TRUST FOR ECONOMIC DEVELOPMENT

MOVED: COUNCILWOMAN FRANCES MIGUEL

SECOND: COUNCILWOMAN EVELYN JUAN MANUEL

DATE: DECEMBER 06, 2010

DISTRICT	LEGISLATIVE REPRESENTATIVES	# OF VOTES	FOR	AGAINST	NOT VOTING	ABSENT
SIF OIDAK 198.7	1. WAVALENE ROMERO (Nicholas Jose)	99.35	X			X
	2. MARY LOPEZ ()	99.35	X			
SELLS 449.6	1. KIMBERLY MULL ()	224.80	X			
	2. EVELYN B. JUAN MANUEL ()	224.80	X			
SCHUK TOAK 159.0	1. FRANCES B. CONDE (<i>Absent</i>) (Fredrick Jose) (<i>Present</i>)	79.50	X			
	2. LINDA PARLEY (Agnes Joaquin)	79.50	X			
SAN XAVIER 204.7	1. FELICIA NUÑEZ ()	102.35	X			
	2. OLIVIA VILLEGAS-LISTON (Eugene Enis)	102.35	X			
SAN LUCY 187.1	1. LORRAINE EILER ()	93.55	X			
	2. GLORIA RAMIREZ ()	93.55	X			
PISINEMO 184.5	1. CHESTER ANTONE (Tony Murrietta)	92.25	X			X
	2. EDWARD MANUEL (Gerald Fayuant)	92.25	X			
HICKIWAN 174.5	1. MICHELLE ORTEGA ()	87.25	X			
	2. SANDRA ORTEGA ()	87.25	X			
GU VO 206.3	1. GRACE MANUEL ()	103.15	X			
	2. PAMELA ANGHILL (Angela Ortiz)	103.15	X			
GU ACHI 230.1	1. TIMOTHY L. JOAQUIN ()	115.05	X			
	2. CYNTHIA E. MANUEL (Louis J. Johnson)	115.05	X			
CHUKUT KUK 277.0	1. ETHEL GARCIA (Sara Mae Williams)	138.50	X			
	2. VERLON M. JOSE ()	138.50	X			
BABOQUIVARI 324.0	1. FRANCES MIGUEL (Roberta Harvey)	162.0	X			
	2. FRANCES G. ANTONE (Vernon Smith)	162.0	X			
TOTAL		2,595.50	2,595.50	-0-	-0-	[02]