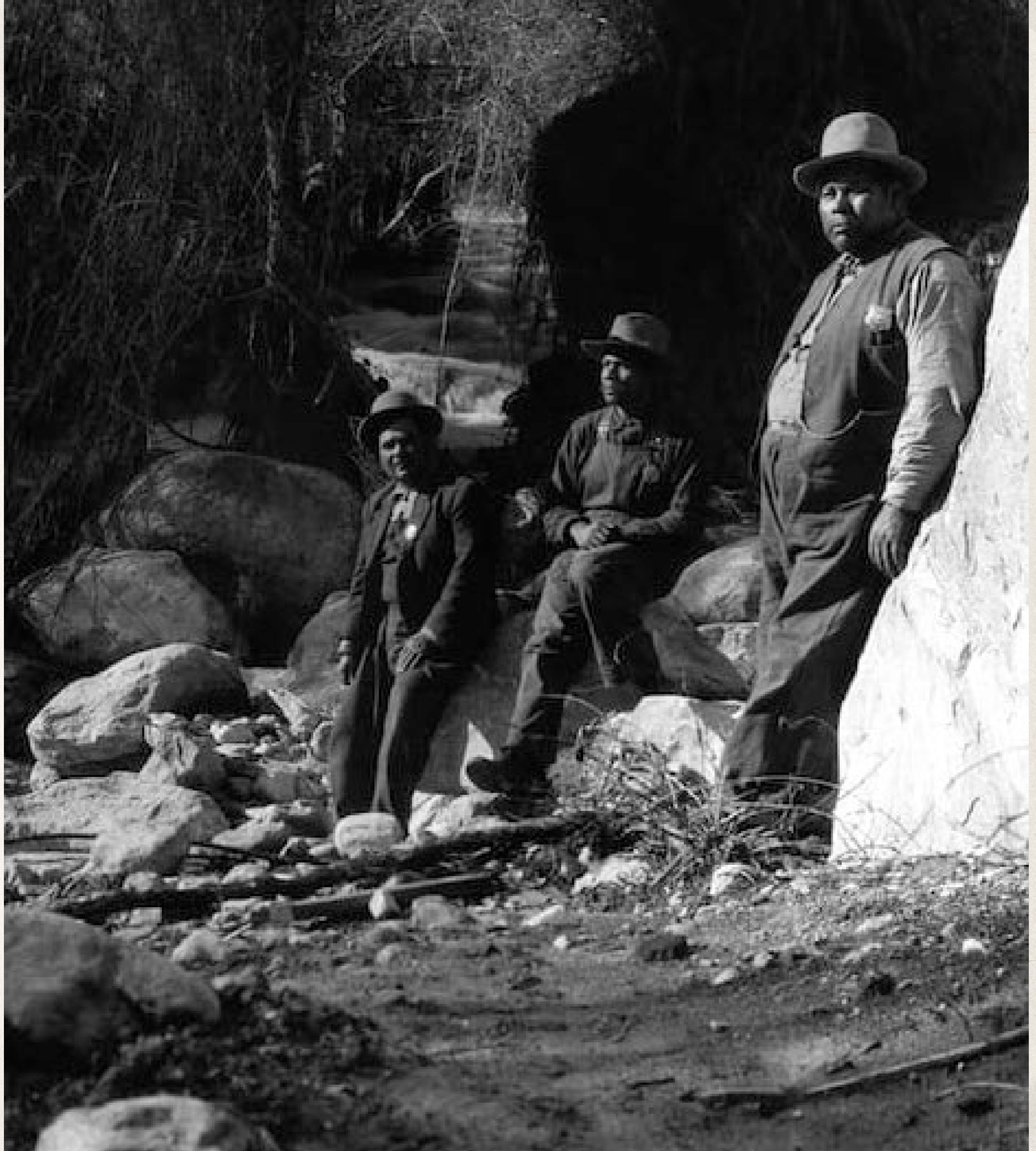


Land Use on the Agua Caliente Indian Reservation

IMLA Annual Conference

September 25, 2020

In 1876 and 1877, the executive orders of Presidents Grant and Hayes established the Agua Caliente Indian Reservation with tribal lands interspersed with non-tribal lands in a checkerboard pattern.



ACBCI Reservation Facts

- The Agua Caliente Indian Reservation consists of more than 31,000 acres in a checkerboard pattern.
- The United States holds in trust approximately 4,000 acres for the Tribe ("**Tribal Trust Lands**") and 18,000 acres for individual Indian allottees ("**Allotted Trust Lands**").
- The Tribe, tribal members, and non-Indians hold the remaining approximately 9,300 acres in fee ("**Fee Lands**").
- The territorial boundary of the Reservation spans the cities of Palm Springs, Cathedral City, Rancho Mirage, and portions of unincorporated Riverside County.

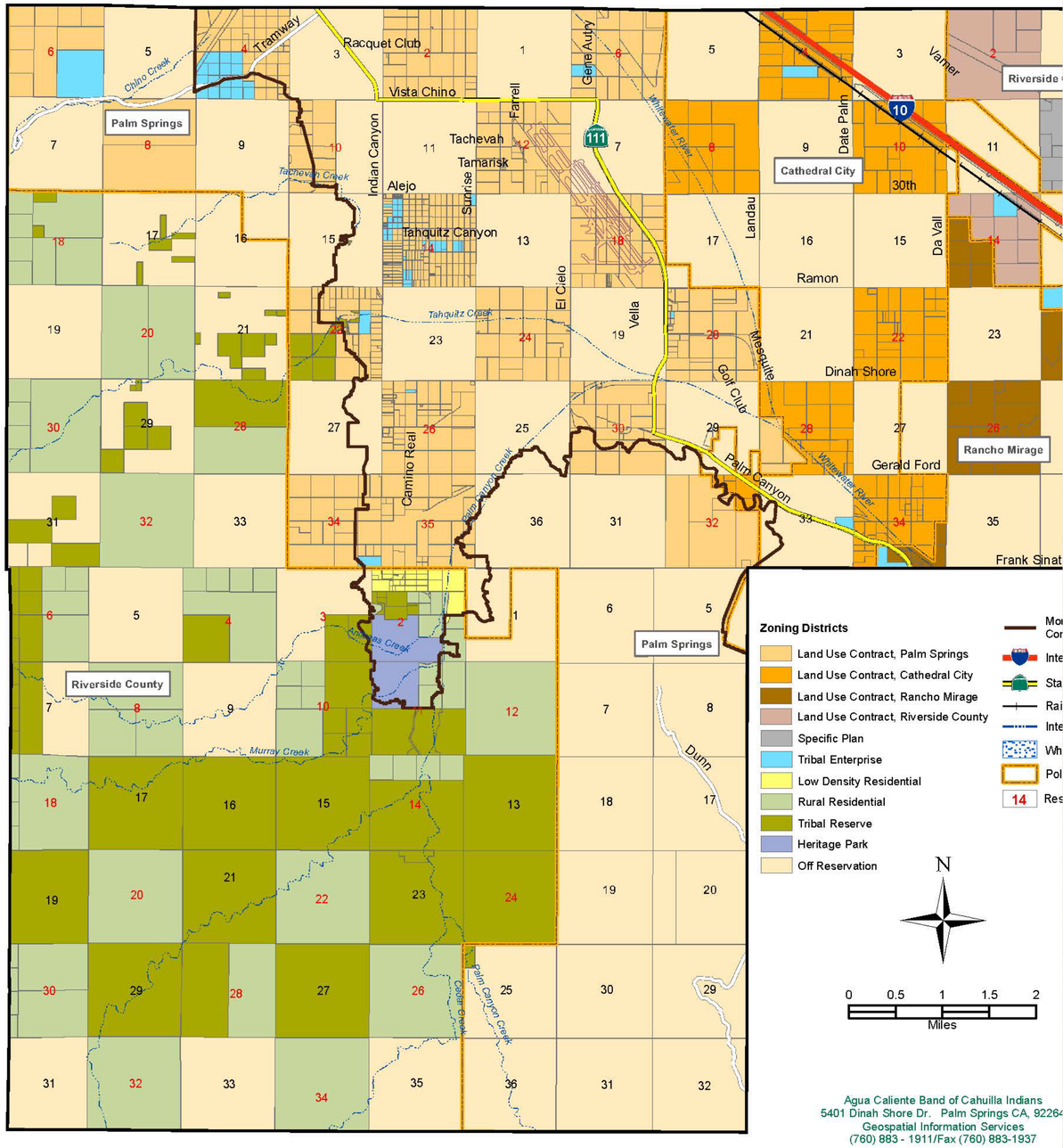
Legal Basis for Tribal Land Use Authority

- Indian tribes possess governmental powers that derive entirely from their status as sovereigns that pre-existed European exploration. In Native American law, these powers are referred to as a tribe's "inherent sovereign powers."

- Pursuant to the Tribe's inherent sovereign powers, the Tribe can assert civil regulatory jurisdiction over the conduct of both Indians and non-Indians when the conduct occurs on Tribal Trust, Allotted Trust, and Tribal Fee Lands.

- The Tribe's ability to assert civil regulatory jurisdiction over the conduct of a non-Indian is more limited when the conduct occurs on non-Indian Fee Lands. In this case, the State and local jurisdictions can assert civil regulatory authority (e.g., land use authority).

- The Tribe can only assert civil regulatory jurisdiction over a non-Indian on non-Indian Fee Lands when the non-Indian has entered into a consensual relationship with the Tribe or if the conduct of the non-Indian threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the Tribe.



Cooperative Land Use Regulation

The Tribe has adopted a multi-faceted approach to regulating land uses on the Reservation.

- For Tribal Trust Lands and Tribal Fee Lands, the Tribe has adopted the ACBCI Land Use Ordinance. The ACBCI Land Use Ordinance applies to projects (both Tribal and non-Tribal) located on Tribal Trust and Tribal Fee Lands.

- For Allotted Trust Lands, the Tribe has delegated its land use authority through contract to the cities of Palm Springs, Cathedral City, Rancho Mirage, and Riverside County.

- For Allotted Trust Lands, the Tribe has adopted as Tribal law the land use related laws, ordinances, regulations, codes, rules, and similar enactments of the local jurisdictions and the State of California.

Purpose of Land Use Contracts

Purpose of all Land Use Contracts is to ensure that a local jurisdiction will apply and enforce the same development standards and procedures within its territorial boundaries whether original land use authority lies with the Tribe or the local jurisdiction.

Standard Land Use Contract

- Delegates the Tribe's land use authority to a local jurisdiction.
- Limits the delegation to Allotted Trust Lands within the limits of a local jurisdiction.
- Establishes that a local jurisdiction can only apply and administer certain land use laws and regulations.
- Establishes that a local jurisdiction cannot apply and administer those land use laws and regulations related to outdoor advertising and historic preservation.

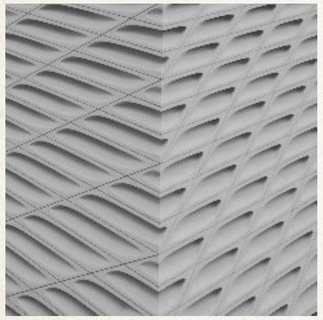


Standard Land Use Contract

- Establishes that a local jurisdiction cannot apply and administer those land use laws and regulations adopted through the initiative and referenda process or that violate federal or Tribal law.
- Acknowledges concurrent land use authority over Allotted Fee and non-Indian Fee Lands.
- Acknowledges an applicant's right to appeal a final decision of a local jurisdiction to the Tribal Council pursuant to Tribal law.
- Allows either the Tribe or local jurisdiction to terminate upon thirty days' prior written notice.



Land Use Approval Process



Application

Applicant on Allotted Trust Lands submits application for land use entitlement pursuant to Tribal law, which incorporates local and California land use laws/regulations.



Local Jurisdiction Review

Local jurisdiction reviews application in accordance with Tribal law, which incorporates local and California land use laws/regulations.



Local Jurisdiction Approval

Local jurisdiction approves or denies land use entitlement.



Applicant Decision on Appeal

Applicant decides whether to appeal a final decision of the local jurisdiction.



Applicant Appeal

Applicant appeals a final decision of the local jurisdiction to the Tribal Council.

Appeal Procedure

Notice of Appeal

- Notice of Appeal filed in office of the Tribal Council within 10 days from the date Appellant receives final decision of a local jurisdiction or its governing body.

Informational Documents

- Within 60 days of the date of the filing of a complete Notice of Appeal, the Appellant files certain informational documents.
- Appellant may request an additional 60 days for good cause.

Referral and Study

- Once appeal is deemed complete, Tribal Council may refer the appeal to the Tribal Planning Department and the Indian Planning Commission for review and comment.

Appeal Procedure

Referral and Study

- Alternative: Once appeal is deemed complete, Tribal Council may determine that additional specialized studies are desirable and direct that the Appellant provide additional data within 60 days of the date of such direction.

Joint Public Meeting Scheduling

- Tribal Council requests joint public meeting with the applicable local jurisdiction.
- Governing body has to respond to Tribal Council joint public meeting request within 30 days of the date of the request.

Waiver

- Local jurisdiction may waive joint public meeting.
- Or, if local jurisdiction fails to respond within 30 days of the date of request, it waives its right to a joint public meeting.

ANY QUESTIONS ?

COVID-19 Tribal Issues

- Tribal governments generally do not have a large tax base and rely on tribal business for almost all governmental revenues used to support a wide variety of programs, services, and financial obligations.

- ACBCI's Constitution provides that all subordinate tribal entities/enterprises are performing essential government functions, one of which is the generation of tribal government income.

- Sought and received express clarification that (1) tribes are not subject to the state orders, and (2) tribal businesses are essential governmental functions.

COVID-19 Tribal Specific Issues

- Voluntary Tribal closure on March 17, 2020 of all tribal offices.
- Compliance with IGRA's public health and safety mandate.
- Compact issues of revenue sharing obligations /IGAs/compliance.
- Develop protocols for all tribal locations (in different local jurisdictions).
- CARES Act – Coronavirus Relief Fund (CRF) timing issues.

Coronavirus Aid, Relief, and Economic Security Act ("CARES Act")

- Becomes law on **March 27, 2020** – ten (10) days after voluntary closure.
- Title V appropriates $150 billion for FY 2020 for "payments to States, Tribal governments, and units of local governments."
- $8 billion reserved to federally recognized tribal governments (575 total).
- To be distributed "**not later than 30 days after March 27, 2020** " or **April 26, 2020**.
- **No formula stated** in Act for tribal allocation.
- After intense lobbying efforts, Treasury requested numerous data elements by April 17, 2020 to purportedly develop an allocation formula.

Coronavirus Aid, Relief, and Economic Security Act ("CARES Act")

- Treasury leaked the submitted data and then decided not to use the requested and submitted data.
- The **April 26, 2020** distribution date came and went. Treasury had not yet developed an allocation formula.
- **April 30, 2020** *Confederated Tribes of the Chehalis Reservation et al. v. Mnuchin* was filed posing question of **who** is eligible to receive CRF. (ANC dispute)
- **May 3, 2020** *Agua Caliente Band of Cahuilla Indians v Mnuchin* was filed seeking, inter alia, a writ of mandamus directing the Secretary to immediately disburse all CRF.
- **May 5, 2020**, the Secretary announced that he would immediately begin to distribute $4.8 billion, or **60%**, of the appropriated emergency funds to tribal governments **based on population data**. The population data came from the Department of Housing and Urban Development's Indian Housing Block Grant program, not from the agency's own data collection efforts. Treasury would reserve **40% of the funds for future disbursement based on employment and expenditure data**, withholding funds for ANCs pending resolution of the *Chehalis* litigation.

Coronavirus Aid, Relief, and Economic Security Act ("CARES Act")

- **May 11, 2020**—16 days after the CARES Act's statutory deadline—the court denied ACBCI's first request for injunctive relief finding that "Plaintiffs . . . [had] not carried their burden to show that the Secretary's delay thus far is so egregious as to warrant mandamus relief today."

- The court warned, however, that the denial of Plaintiffs' motion "does not mean the Secretary enjoys an indefinite period to carry out Congress' command. . . . **[S]hould the Secretary's delay verge on doubling the time Congress mandated to fully disburse Title V funds to Tribal governments**, then the question of egregiousness becomes a closer one than it is today.

Coronavirus Aid, Relief, and Economic Security Act ("CARES Act")

- **June 5, 2020**—39 days after the congressional deadline lapsed—ACBCI filed a Renewed Mot. for Prelim. Inj.

- **June 12, 2020**—the Secretary began to distribute the remaining 40% of emergency relief, but withheld $679 million, or roughly 8.5% of Title V funds, due to a recently filed litigation,

- **June 15, 2020**—ACBCI Plaintiffs' Renewed Motion for a Preliminary Injunction is granted mandating the Secretary to disburse, "by no later than June 17, 2020, the remaining $679 million in Title V CARES Act funds designated for Tribal governments."

Coronavirus Aid, Relief, and Economic Security Act ("CARES Act")

- **June 17, 2020 -** Treasury completed the CRF distributions to Indian tribes.
  - 92 days after voluntary closure.
  - 82 days after CARES Act.
  - 52 days after statutorily mandated distribution date.

Thank you for your time!

- Please feel free to contact us with questions.

John T. Plata, General Counsel
Rahsaan J. Tilford, Deputy General Counsel
Agua Caliente Band of Cahuilla Indians
5401 Dinah Shore Dr
Palm Springs, CA 92264
760-699-6800
jplata@aguacaliente.net
rtilford@aguacaliente.net