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January 25, 2013

United States Department of the Interior
Office of Hearings and Appeals
Interior Board of Indian Appeals
801 North Quincy Street
Suite 300
Arlington, VA 22203

Re: Miami-Dade County, Florida v. Acting Eastern Regional Director, Bureau of Indian Affairs; *Docket No. IBIA 12-152*

Dear Sir or Madam:

Enclosed please find the Opening Brief of Miami-Dade County, Florida, which includes an Appendix and Certificate of Service. In addition, please find a Notice of Appearance for undersigned counsel.

Regards,

Ileana Cruz
Assistant County Attorney

IC/ej

cc: U.S. Dept. of Interior, Eastern Regional Director, BIA
Nick Holt, Esq., Office of Solicitor, Knoxville Field Office
U.S. Dept. of Interior, Office of the Regional Solicitor
U.S. Dept. of Interior, Office of the Regional Solicitor, MS 6513 – MIB
U.S. Dept. of Interior, Assistant Secretary – Indian Affairs
Bernardo Roman, III, Tribal Attorney
Honorable Colley Billie, Chairman, Miccosukee Indian Tribe
Honorable Rick Scott
Katherine Fernandez Rundle

United States Department of the Interior
OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
SUITE 300
ARLINGTON, VA 22203

MIAMI-DADE COUNTY, FLORIDA

Appellant,

DOCKET NO. IBIA 12-152

v.

ACTING EASTERN REGION DIRECTOR,
BUREAU OF INDIAN AFFAIRS,

Appellee,
_____/

NOTICE OF APPEARANCE OF COUNSEL

COMES NOW, the undersigned, and files this Notice of Appearance as Counsel of Record on behalf of Miami-Dade County, Florida. Please direct all future correspondence and pleadings in this matter to the undersigned.

Respectfully submitted,
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By: _____

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UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF HEARINGS AND APPEALS INTERIOR
BOARD OF INDIAN APPEALS

Miami-Dade County, Florida,	) Docket No. IBIA 12-152
	)
Appellant,	)
	)
v.	)
	)
Acting Eastern Regional Director,	)
Bureau of Indian Affairs,	)
	)
Appellee.	)
	)

Opening Brief of Appellant, Miami-Dade County, Florida

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INTRODUCTION

This is an appeal of the Notice of Decision (the "Decision") of the Acting Eastern Regional Director, Randall Trickey (the "Regional Director"), of the Bureau of Indian Affairs ("BIA"), Department (the "Department"), dated July 27, 2012, to accept into trust a golf course that occupies 229 acres of land (the "Golf Course") located in a subdivision of Miami-Dade County (the "County"), known as Kendale Lakes. The Golf Course is located over 25 miles away from the Miccosukee Reserved Area (the "MRA") and eight miles away from the Miccosukee Resort and Gaming Casino (the "Casino"). The Miccosukee Tribe of Indians of Florida (the "Tribe") has owned and operated the Golf Course and Country Club (together, the "Property") in fee status since it purchased the Property in 2001. The Tribe applied to the BIA to have the Property placed into trust for the benefit of the Tribe in early 2003. Almost a decade later, the Regional Director issued his Decision approving the application based upon the Indian Reorganization Act, 25 U.S.C. § 461, et seq. (the "IRA" or "Act")

The Act permits the Secretary of the Interior (the "Secretary") to take land into trust "for the purpose of providing land for Indians."[1] The Act states that the "term Indian as used in this act shall include members of any recognized Indian tribe now under federal jurisdiction. . ."[2] The United States Supreme Court has held that in order for a tribe to be eligible to use the Act as a mechanism to have its lands placed into trust, it must have been a recognized tribe "under federal jurisdiction" as of June 18, 1934. See Carcieri v. Salazar, 555 U.S.C. 379, 395-96 (2009) (holding that the Secretary's authority to take land into trust for Indians was limited to Indian tribes that were under federal jurisdiction when the Act was enacted in 1934).

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1 25 U.S.C. § 465.
2 25 U.S.C. § 479.

The Miccosukee Tribe was not federally recognized as a tribe of "Indians" until January 11, 1962.[3] Because the Tribe was not recognized before 1934, the Secretary does not have the authority to take land into trust for the Tribe under the Act.

In addition, even if the Tribe was otherwise eligible to benefit from the Act, the Secretary, through authority delegated to the Regional Director, abused his discretion by failing to give greater weight to the concerns of the state and local governments as mandated by the rules implementing Section 5 of the Act. Specifically, in considering a request to take off-reservation land into trust on behalf of a tribe, the Secretary *must give greater weight to the local government's jurisdictional concerns* in accordance with the standards set forth in 25 C.F.R. § 151.11 issued by the BIA ("Section 151.11"). Section 151.11 imposes additional considerations, over and above those evaluated for "on-reservation" requests under 25 C.F.R. § 151.10. The Regional Director failed to give greater weight to the County's and State's concerns regarding jurisdictional conflicts that will jeopardize the health and safety of the residents of the Kendale Lakes community and the public at large. The Decision is arbitrary and capricious, unsupported by the record and otherwise not in accordance with the law. It must be reversed.

STANDARD OF REVIEW

In reviewing the decisions of a regional director, the Interior Board of Indian Appeals (the "IBIA") must "determine whether they comport with the law, are supported by substantial evidence, or are otherwise arbitrary or capricious."[4] The burden is on the appellant to show "error in the regional director's decision."[5] On appeal, however, "any information available to

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3 See generally, Harry A. Kersey, Jr., An Assumption of Sovereignty 175-89 (1996).

4 Joseph La-Fauss Pappin III v. Eastern Oklahoma Regional Director, Bureau of Indian Affairs, 50 IBIA 238, 242 (2009).

5 Id.

the reviewing official may be used in reaching a decision whether part of the record or not."[6] Further, the IBIA may consider documents not included in the record, provided the parties are given notice and an opportunity to comment."[7] The IBIA must review de novo the "sufficiency of the evidence."[8] If the regional director failed to follow all of the required standards, the IBIA will reverse the regional director's judgment.

THE PROPERTY

The Golf Course sits in the heart of Kendale Lakes, a densely populated, urban subdivision of unincorporated Miami-Dade County established in 1972.[9] The Property is surrounded by tree-lined streets and middleclass homes built in the early 1970s. Many homes abut the Property, thus, using the Golf Course as their backyards. The Golf Course was originally offered as an amenity to local homeowners, and still remains an attractive feature of the neighborhood. The Golf Course features a Country Club that houses banquet facilities and an outdoor Olympic-size swimming pool.

The Golf Course is designed in the shape of a horseshoe with single-family homes and multifamily apartment buildings built in the interior pocket of the horseshoe, as well as around its exterior rims. The total area of Kendale Lakes is approximately 8.6 square miles, and the Golf Course occupies approximately one square mile of it.[10] With a population of nearly 60,000 and over 19,000 households, Kendale Lakes suffers from high volume traffic. The major arteries bounding the Property are: to the north and south, S.W. 56th Street and S.W. 72nd Street, respectively; and to the west and east, S.W. 147th Avenue and S.W. 137th Avenue, respectively.

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6 25 C.F.R. Part 2, § 2.21.

7 25 C.F.R. Part 2, § 2.21.

8 Patricia Lafferty LeCompte v. Acting Great Plains Regional Director, Bureau of Indian Affairs, 45 IBIA 135, 142 (2007) (citing Birdtail v. Roicky Mountain Regional Director, 45 IBIA 1, 5 (2007)).

9 See Map of Golf Course at Appendix "A."

10 See Map of Kendale Lakes, at Appendix "B."

In addition, the Golf Course is adjacent to the Miller Square Shopping Center, a 450,000 square foot shopping mall.

The Miccosukee Reserved Area (the "MRA"), where a majority of Tribe members live, is located over 25 miles away from the Property. Given the congestion and heavy traffic patterns of the area, travel to the MRA can take anywhere between 40 minutes to an hour. The Property is also located eight miles from the Tribe's Casino, which itself is located on Krome Avenue (a.k.a. S.W. 177th Avenue) north of the Tamiami Trail (a.k.a. U.S. 41).

As set forth below, the Property has been dedicated to the local residents pursuant to a 99-year use-restriction covenant. Its canals and lakes have been dedicated in perpetuity to the residents of the County at large.[11]

PROCEDURAL POSTURE

By application dated February 5, 2003 (the "Application"), the Tribe requested the Secretary place the Property into trust pursuant to 25 U.S.C. § 465. In August 2003, the Eastern Regional Director, Franklin Keel, sought comments on the Application from the Governor of Florida, Mayor of the City of Miami, and the Board of County Commissioners of Miami-Dade County. The Miami-Dade County Manager, George Burgess, objected to the Application by letter dated October 8, 2003 (the "County Objection"). The State Attorney, Katherine Fernandez Rundle, also objected by letter dated October 15, 2003 (the "State Attorney Objection"). Thereafter, the Chairman of the Tribe, Billy Cypress, responded to the Objections by letter dated October 29, 2003 (the "Tribe's Response").

No further contact was made with the County or the State Attorney regarding the Application until almost a decade later, when on July 27, 2012, the Regional Director issued his

[11] See Plat of Kendale Lakes North Section 1 ("Plat 93-1") at Appendix "C."

Decision. This appeal to the IBIA ensued pursuant to the County's timely filing of a Notice of Appeal and Statement of Reasons on August 23, 2012.

ARGUMENT

1. The Miccosukee Tribe was not a recognized tribe under federal jurisdiction in 1934 and is therefore ineligible to use the IRA to have land placed into trust by the BIA

The BIA's fee-to-trust land acquisition regulations require the BIA to identify the existence of statutory authority for a trust acquisition, including any limitations contained in such authority.[12] In the present case, the BIA relied upon Section 5 of the IRA of 1934, codified as 25 U.S.C. § 465. Under that section, the Secretary may accept land into trust only "for the purpose of providing land for *Indians*."[13]

In the 2009 landmark case of Carcieri v. Salazar, 555 U.S. 379, 382 (2009), the United States Supreme Court held, based on the definition of "Indian" in Section 19 of the Act, 25 U.S.C. § 479, that the Secretary's authority to take land into trust under § 465 is limited *only* to tribes that were "under Federal jurisdiction" at the time the Act was enacted in June 1934. In Carcieri, the tribe for which the Secretary sought to acquire land in trust was the Narragansett Indian Tribe of Rhode Island. The federal government did not formally recognize the tribe until 1983, and neither party in the case contended the tribe was otherwise "under Federal jurisdiction" in 1934.

Thus, in the wake of Carcieri, the BIA, in reviewing a proposed fee-to-trust land acquisition, must analyze and determine whether the tribe in question was "under Federal jurisdiction" **in 1934**.[14] Moreover, because the Carcieri decision represents the authoritative interpretation of the Act, the BIA must, even when reviewing a matter that arose under the Act

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12 See 25 C.F.R. § 151.10(a).

13 25 U.S.C. § 465 (emphasis added).

14 See New York v. Salazar, 2012 WL 4364452, at *14 (N.D.N.Y. Sep. 24, 2012); Cal. Coastal Comm'n v. Pac. Reg'l Dir., Bureau of Indian Affairs, 51 IBIA 141, 141 (2010).

prior to February 24, 2009 (the date Carcieri was decided), still use the Carcieri Court's Act analysis as the paradigm for its inquiry.[15] Failure of the BIA to perform such an analysis renders the Regional Director's fatally defective.[16]

A review of the Decision in the instant case clearly reveals that the Regional Director failed to perform the jurisdictional analysis required under Carcieri.[17] In fact, there is no indication that the Regional Director even considered the impact of Carcieri on his decision. Yet he rendered his Decision more than three years after Carcieri was decided. This glaring omission leaves the Regional Director without jurisdiction to place the Property into trust.[18]

Indeed, had the Regional Director performed the aforementioned Carcieri analysis, he would have reached the inescapable conclusion that the Tribe was not "under Federal jurisdiction" in 1934, as the Tribe did not become officially recognized by the Federal government until January 11, 1962.[19] Moreover, nothing in Tribe's history suggests that it was otherwise "under Federal jurisdiction" in 1934.[20] Accordingly, the Tribe is *not* eligible to have land taken into trust under 25 U.S.C. § 465, and the Regional Director's decision must be reversed.

At the time the Carcieri decision was rendered, the Application which is the subject matter of this appeal already had been submitted to the Regional Director, but a notice of decision had not yet been issued. The Regional Director requested additional information from the Tribe over the course of the nine years it took to evaluate the Application, but it appears from the record that he did not request information to establish that the Tribe was under federal

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15 See Salazar, 2012 WL 4364452, at *14, n. 26.

16 See id. at *14.

17 See Decision pp. 1-2.

18 See Salazar, 2012 WL 4364452, at *14.

19 See John C. Carver to Reginald C. Miller, 11 January 1962, file 4374-1962-Micc.-054-3, Bureau of Indian Affairs, Central Files, National Archives; Record Group 75, National Archives; Washington National Records Center, Suitland MD.

20 See generally Harry A. Kersey, Jr., An Assumption of Sovereignty 175-89 (1996).

jurisdiction in 1934. Additionally, to the extent the Regional Director did request such information from the Tribe, the County was not provided with a copy of what the Tribe submitted or an opportunity to respond. The record is devoid of any support establishing that the Tribe is eligible to have land placed into trust under the Act. Accordingly, the Decision must be reversed.

2. The Regional Director Failed to Adequately Consider the Criteria Set Forth in 25 C.F.R. § 151.11 Governing "Off-Reservation" Acquisitions

In a critical abuse of discretion, the Regional Director failed to give greater weight to the concerns raised by the County regarding the impacts on regulatory jurisdiction and land use conflicts resulting from the placement of the Property into Trust. The Property is located a great distance away from the Tribe's MRA. Accordingly, the Secretary must apply the stricter standard found in Section 151.11 to accept "off reservation" land into trust for the Tribe. That section requires the Secretary to consider seven of the criteria set forth in 25 C.F.R. § 151.10, which governs "on reservation" acquisitions, but to evaluate them applying a standard that is more deferential to the concerns of the state and local governments.[21] Specifically, 25 C.F.R. § 151.11(b) mandates:

> [A]s the distance between the tribe's reservation and the land to be acquired increases, the Secretary shall give *greater scrutiny* to the tribe's justification of the anticipated benefits from the acquisition. The Secretary shall give *greater weight to the concerns* raised pursuant to paragraph (d) of this section.

The concerns referred to in paragraph (d) are those raised by state and local governments regarding jurisdictional problems and potential conflicts of land use, as well as potential impacts

[21] See Jefferson County, Oregon, Board of Commissioners v. Northwest Regional Director, BIA, 47 IBIA 187, 188 (2008) (vacating decision and remanding to resolve contiguity dispute or apply the "greater scrutiny" standard of § 151.11 for non-contiguous land acquisitions).

on regulatory jurisdiction.[22]

The IBIA has recognized that the comments of state and local governments must be given increasing "weight" and "scrutiny" as the distance between a tribe's reservation and the subject land increases.[23] The United States Court of Appeals for the First Circuit described this rule in Carcieri v. Kempthorne, stating:

> Generally, the farther from a reservation the land is, the greater the scrutiny the Secretary gives to the justification of anticipated benefits from the acquisition.[24]

While the Decision begins by acknowledging that Section 151.11 governs the acquisition, the Regional Director then proceeds to ignore the stricter scrutiny and greater weight standards required by that section.[25] Tellingly, the Decision does not even mention the deferential "off-reservation" standard anywhere in the Regional Director's analysis. The Regional Director's failure to accord the appropriately deferential standard to the County's and the State Attorney's concerns in his analysis of the Section 151.10 criteria is discussed below.

3. The Tribe Has No Need for the Trust Acquisition, nor Does the Tribe Have a Valid Purpose Under 25 C.F.R. § 151.10(b) and (c).

The Regional Director's decision is arbitrary and capricious, as the Tribe does not adequately justify the need and purpose for the Property to be placed into trust. Under 25 C.F.R.

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22 See 25 C.F.R. § 151.11(d), which states:

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

23 Jefferson County v. Northwest Regional Director, 47 IBIA at 189-90 (vacating regional director's decision to take land into trust and stating: "[w]e think section 151.11(b) must be read to add something to the criteria in section 151.10).

24 Carcieri v. Kempthorne, 497 F.3d 15, 24 (1st Cir. 2007), *cert. granted in part*, 128 S.Ct. 1443, 170 Led. 2d 274 (Feb. 25, 2008).

25 See Decision p.1 (stating: "This request has been reviewed under the requirements of § 151.11 for off-reservation fee-to-trust land acquisitions.")

§ 151.10(b), a tribe must set forth its specific need for land to be placed into trust status, and the Secretary must consider "the need of ... the tribe for additional land." Given the distance of the Property from the MRA, the Regional Director should have applied a stricter scrutiny to the Tribe's justification of the anticipated benefits of the acquisition.[26] The Regional Director did the opposite – he utterly failed to scrutinize the Tribe's justification.

A tribe can establish a need for additional land by showing that it has minimal or no land in trust,[27] that the land acquisition would "greatly enhance the Tribe's economic base and its ability to be self-sufficient,"[28] or "trust acquisition will help ensure the survival of the Tribe."[29]

In addition to showing a need, the tribe must also describe the purposes for which it will use the land,[30] which the Secretary must consider pursuant to 25 C.F.R. § 151.10(c). The Secretary may accept land into trust under 25 C.F.R. § 151.3(a) if it is "necessary to facilitate tribal self-determination, economic development, or Indian housing."[31] However, where there is "no justification for placing the land in trust status and removing the property from the state and local tax rolls," the Secretary should deny the application.[32] Consequently, the Application must adequately justify both the need and purpose for land to be placed into trust.[33]

First, the Tribe did not adequately set forth a need for additional land under 25 C.F.R. § 151.10(b). The Regional Director relies on three reasons stated by the Tribe. The first cited "need" is to increase the Tribe's land base. Unlike other cases in which a need was found, the

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26 Section 151.11(b) mandates:

> [A]s the distance between the tribe's reservation and the land to be acquired increases, the Secretary shall give ***greater scrutiny*** to the tribe's justification of the anticipated benefits from the acquisition.

27 See Keetoowah Band of Cherokee Indians v. Director, Eastern Oklahoma Region, Bureau of Indian Affairs (Decision 6/24/2009, p. 5).

28 South Dakota v. Dept. of Interior, 423 F.3d 790, 801 (8th Cir. 2005).

29 South Dakota v. Dept. of Interior, 401 F.Supp. 2d 1000, 1008 (D.S.D. 2005).

30 25 C.F.R. § 151.10(c).

31 25 C.F.R. § 151.3(a).

32 See McAlpine v. U.S., 112 F.3d 1429, 1436-37 (10th Cir. 1997).

33 See id.

Regional Director did not state that the Tribe currently has minimal or no other land in trust.[34] In fact, the Tribe currently has plenty of land. The Tribe has only 650 members, yet it has over 80,580 acres of land. That calculates to over 124 acres of land for each Tribal member. Moreover, the Tribe's statement of need does not assert that the land acquisition is necessary for purposes of the Tribe's continued existence.[35] Instead, the Regional Director relies on the pretext of economic diversification and revenue generation, but does not explain why these cannot be met on non-tribal-trust land. This is not surprising because the Tribe has no need for additional land. The Regional Director also notes that most of the Tribe's land is undeveloped. A tribe must show that it has a demonstrable need for the property, such as that "existing land is already developed."[36] Here, with over 80,000 acres of mostly undeveloped land, the Tribe is hard-pressed to argue they have a need to increase their land base.

The Regional Director failed to apply a stricter scrutiny to the two other purported needs cited by the Tribe: to provide an additional source of revenue to the Tribe, and to diversify the economic development ventures of the Tribe. Neither the Tribe, nor the Regional Director, explains why the Tribe needs to place the Golf Course into trust in order to accomplish these revenue generating and diversification goals with the land remaining in fee status. Moreover, neither need could be met by taking this Golf Course into trust. First, the Tribe has owned the Property in fee since 2001. According to the Tribe's Business Plan submitted to the Regional Director by the Tribe in 2010, the Property is not, and has never been profitable. It, therefore, cannot be considered a source of revenue generation for the Tribe.

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34 See Keetoowah Band of Cherokee Indians, p. 10; South Dakota, 423 F.3d at 801.

35 See South Dakota, 401 F.Supp. 2d at 1008.

36 Department of Interior, Bureau of Indian Affairs Handbook on Acquisition of Title to Land Held in Fee or Restricted Fee, p. 25 (citing Avoyells Parish, Louisiana, Policy Jury v. Eastern Area Director, BIA, 34 IBIA 149, 153 (1999)).

In fact, the Golf Course appears to be a drain on the Tribe's assets, as the Golf Course has apparently been insolvent, with its debts exceeding its revenues in the amount of over half-a-million annually.[37] The Regional Director presumably relied on the Cash Flow Statement provided by the Tribe in its Business Plan to conclude that the Golf Course would satisfy the need of additional revenue. That reliance was improper not only for the preceding reason, but also because the Cash Flow Statement prepared by the Tribe contains misleading gross-profit projections for all years from 2010 through 2014.[38] Specifically, the Tribe states that, using 2010 as a base year, the Golf Course's gross profits for 2010 were projected at $2,288,044. This figure is mathematically wrong. The figure was arrived at by adding total revenue of $1,842,395 to the cost of sales of $445,649. Clearly this is misleading, as the correct calculation calls for deducting, and not adding, the cost of sales to gross revenue. Thus, the correct gross profits for 2010 should have been stated at $1,396,746. The difference between the stated profit amounts is almost $900,000.00. This mistake underscores the unreliability of the Cash Flow Statement. In sum, had the Regional Director properly analyzed the Tribe's stated need for the Property as an additional source of income, the Regional Director would have concluded that after 13 years of unprofitability and faulty accounting, the Tribe's stated "need" does not withstand the least bit of scrutiny as an additional source of revenue.[39] The Regional Director's reliance on faulty cash flow data constitutes a mistake of fact, and grounds for reversal.[40]

Similarly, the Regional Director did not properly analyze the Tribe's third stated "need" – economic diversity. The Tribe has owned this Golf Course for over ten years. The Tribe's

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37 See Business Plan at Appendix "D."

38 See id.

39 Section 151.11(b) requires the Regional Director to apply a stricter scrutiny to the Tribe's justification of the anticipated benefits from the acquisition.

40 IBIA vacated the southwest regional director's decision to place land into trust because the decision was based on a mistaken assumption regarding the collection of taxes on the property. The faulty premise, the IBIA held, may have led to a faulty decision, and therefore, vacated it. See Rio Arriba, New Mexico, Board of County Commissioners v. Acting Southwest Regional Director, Bureau of Indian Affairs, 36 IBIA 14, 21 (2001).

economic enterprise has, therefore, been diverse for over a decade. No data suggests that the Tribe needs to place it into trust to promote economic diversity. Inexplicably, the Regional Director focuses on the Tribe's historic subsistence living on the natural resources of the Everglades to conclude that the Tribe needs this additional area to address their economic development needs. The Regional Director's analysis completely ignores the reality of the Tribe's wealth generated by its large-scale casino operations in the County. Tribal members are not engaged in subsistence living – the truth is quite the opposite – they are a wealthy tribe that distributes hundreds of thousands of dollars to their members each year. According to published reports, each Tribal member receives at least $120,000 annually from the Tribe.[41] The Tribe can easily afford to pay the taxes on the Property. The record simply contains no evidence to support a conclusion that there is a need to remove this Property from the tax rolls.

As to the purpose for which the land will be used, the Regional Director focuses mainly on stating that the Tribe has no plans to change the existing use as a golf course. The Regional Director summarily dismisses the County's concerns that the use may be subject to change after the land is placed into trust. This prong of the analysis, 25 C.F.R. § 151.10(c), is of critical concern to the residents of Kendale Lakes and the County. It causes a jurisdictional conflict that likely will only be resolved after years of costly litigation with the community's local residents. The issue emanates from the fact that the Property is encumbered by a 99-year restrictive covenant that is written into the original plat that established the community of Kendale Lakes.[42] The Plat specifically mandates:

> Tract "B", as shown on the attached plat, shall not be permitted for any use other than a golf course, or a country club or operations

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[41] See Jay Weaver, Tribal Chairman's Binge Spending Led to Bad Blood, The Miami Herald, July 7, 2012 at Appendix "E."

[42] See Plat 93-1 at Appendix "C."

> incidental thereto. These restrictions shall continue for ninety-nine (99) years. . . .

The Regional Director did not account for the fact that the Tribe implies, if not outright states in its Response, that it is not bound by the restrictive covenant.[43] As set forth in section 5.b.v., *infra*, discussing the jurisdictional quagmire that ensues from placing this land into trust, the law requires the Tribe to honor restrictive covenants.[44] Yet based on the Tribe's Response, it is clear that the Tribe disagrees, thus causing a substantial jurisdictional conflict. The Regional Director's simple statement that the purpose and use is adequately described in Tribe's Application says nothing to support his conclusion that the Property should be placed into trust. He virtually ignores the concerns of the local governments and the affected local residents. The Regional Director's utter failure to consider this 99-year restrictive covenant's impact on the Tribe's application renders the Decision arbitrary and capricious.

Lastly, the Regional Director concludes that the Tribe requires placing this Golf Course into trust to advance the Tribe's goal of self-sufficiency. The Tribe has achieved self-sufficiency. It has a full-fledged government and business enterprise that acts in the interest of its members, and particularly, the small number of members who live within the reservation's boundaries. It has vast financial resources,[45] a well-developed governmental and economic infrastructure, and plenty of land.

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43 See Tribe's Response p.3.

44 The Tribe stated in its Response that it would accede to the policy exceptions carved out in the Preliminary Title Opinion; however, no cooperation agreement was reached with the Tribe, and no guarantee of enforceability of the covenants, conditions and restrictions exists. While case law favors enforceability of restrictive covenants, it is not clear either way. See People ex rel. Dept. of Public Works v. 25.09 Acres of Lands, 329 F.Supp. 230, 233 (S.D. Cal. 1971) (acknowledging that "a restrictive covenant is generally deemed a property right under federal law;" thus, in eminent domain context is a compensable interest); Friends of East Willits Valley v. County of Mendocino, 101 Cal. App. 4th 191, 123 Cal. Rptr. 2d 708 (Cal. Ct. App. 2002) ("We hold that federal law does not void prior restrictions on land agreed to before the land passed into trust.").

45 See Jay Weaver, Tribal Chairman's Binge Spending Led to Bad Blood, The Miami Herald, July 7, 2012 at Appendix "E."

The Tribe's stated purpose is a "want" and not a "need." There is certainly nothing in the record demonstrating a need for additional trust land. The Regional Director abused his discretion, and the Decision is arbitrary and capricious.

4. The Regional Director Failed to Consider the Substantial Impact on the County Resulting From the Acquisition of the Trust Land and Subsequent Removal of the Land From the County's Tax Rolls Under 25 C.F.R. § 151.10(e).

Under 25 C.F.R. § 151.10(e), the Regional Director must consider "the impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls." The County provides a multitude of governmental services to the Golf Course and Country Club. Those services include fire suppression and emergency rescue and response; County Sheriff and local police patrol and protection services; environmental protection, public works, code enforcement; building plans review and inspections; water and sewer; solid waste removal; planning and zoning; emergency management; transportation; and business regulation, among other services.

The County raised its concern that the loss of tax revenue caused by the removal of almost 230 acres of land from the tax rolls would likely cause an unjust increase in the tax burden of County residents. In spite of the County's concerns, the Regional Director concluded that there would be no significant impact on the County. His conclusion rests on the Tribe's theory that the economic activity generated by the purchase of goods and services for the Golf Course, and by employee payroll, is sufficient to offset any adverse impact to the taxpaying citizens of the County.[46]

His conclusion constitutes an abuse of discretion as it misses the import of Section 151.10(e). That section is concerned with the impact on the County's tax revenues. The Regional Director's "offset" argument, adopted wholesale from the Tribe's Response, has no

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[46] See Decision p. 4.

merit.[47] The County is required to fund provision of community services using only property tax revenue. No level of economic activity at the Property can offset property tax revenue loss because the taxes generated from the sale of goods and services do not fund the County's provision of community services. Moreover, the "offset" argument does not work because the Golf Course has already been generating sales of goods and services for over a decade. The economic activity it generates is not a new revenue source that could offset the newly lost property tax revenue. Thus, the argument has no merit, and it was error for the Regional Director to reach this improper conclusion.

The Regional Director follows the preceding erroneous conclusion with another rather irrelevant observation. He argues that there has been a decrease in the County's overall property tax revenue due to the collapse of the real estate market. The Regional Director's mention of this observation is perplexing, given that it cuts against further reducing the tax base by removing these 230 acres from the tax rolls.

Next, the Regional Director failed to consider the burden on the fire rescue department to deliver emergency services to the Property without ability to recoup costs. The fire rescue department would have to absorb the cost of responding to emergencies on the Property at no charge to the Tribe. Indeed, the costs of first responder salaries, equipment purchases, maintenance, and associated costs would instead be shouldered by the local residents. They would doubtlessly see an increase in fees to compensate for the lost property tax revenue. Thus, the cost and burdens for the current services, as well as future services, will unjustly fall on other property owners within the County, despite the Tribe's clear ability to pay. The Regional Director's dismissal of the County's concerns does not demonstrate the deference to the County's concerns required by section 151.11(b).

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47 See Tribe's Response p. 4.

Section 151.10(e) does not spell out the standards for assessing the loss of tax revenue to local governmental bodies, but the Secretary has considered the presence of voluntary payments made by a tribe, as well as service or cooperation agreements reached with local governments.[48] Where a tribe states that "it is willing to negotiate future intergovernmental service agreements" with local municipalities for the costs of services, the tribe's payments under such agreement would reduce the impact from the loss of tax revenue.[49] Here, not only would the County not receive payments from the Tribe, but the Tribe has acknowledged in its Response that it would require the services of the County,[50] though it would not pay for them through taxation. There is no service agreement with the Tribe, and no cooperation agreement pursuant to which the Tribe agrees to pay for services provided by the County.

The second purported "offset" of lost tax revenue claimed by the Regional Director is that the Tribe would provide its own law enforcement to the Property, thereby reducing costs to the County's police force. As addressed in Section 5.a., *infra*, discussing Section 151.10(f), the implications of introducing the Tribe's law enforcement agency into this densely-populated urban neighborhood will likely increase the County's law enforcement costs, and in fact, result in costly duplication of services and jurisdictional disputes. Because the Regional Director summarily dismissed the County's concerns, and instead focused on the Tribe's "offset" argument, the Regional Director abused his discretion, rendering his decision arbitrary and capricious.

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48 See Shakopee Mdewakanton Sioux Community Decision, dated June 7, 2007.

49 See id. (finding that intergovernmental agreements produced a "mitigating effect" on the loss of tax revenues).

50 See Tribe's Response p. 4.

5. The Regional Director Failed to Consider Significant Jurisdictional Problems and Land Use Conflicts Under 25 C.F.R. § 151.10(f).

The Regional Director failed to give greater weight to the County's jurisdictional concerns, as required by Section 151.11(b) given the distance of the Property to the Tribe's reservation. Under 25 C.F.R. 151.10(f), the Regional Director must consider "[j]urisdictional problems and potential conflicts of land use which may arise." Where a tribe unilaterally attempts to revive its sovereign control "[p]arcel-by-parcel," the effect is to ""seriously burde[n] the administration of state and local governments.""[51] Because of the potential for significant consequences, the BIA "is required to consider jurisdictional issues identified in response to the Notice of Application and other relevant comments received."[52] In addition to analyzing potential conflicts, the BIA must also discuss negotiations and agreements between the state and/or local governments relative to services.[53] Although the BIA is not required to consider "every speculative use," it must nevertheless "give reasonable and prudent review of all credible information received or obtained independently."[54] Moreover, for "individual acquisition requests," the BIA must consider how the acquisition would affect existing land use ordinances. Thus, prior to acquiring land into trust status, the BIA must conduct an adequate review and analysis of the potential for jurisdictional or land use conflicts; the failure to do so is arbitrary and capricious, an abuse of discretion, and otherwise in violation of the law.

The Regional Director acted arbitrarily and capriciously by summarily concluding that "no substantial problems or potential conflicts of land use" would result from the placement of the Property into trust.[55] The County and the State (together, the "Local Authorities") raised

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51 City of Sherrill v. Oneida Indian Nation, 544 U.S. 197, 200 (2005).
52 Dept. of Interior, BIA Handbook on Acquisition of Title to Land Held in Fee or Restricted Fee, p. 26.
53 See id.
54 See id.
55 Decision p. 6.

serious jurisdictional conflicts that the Regional Director failed to adequately address and accord greater weight. Specifically, the conflicts raised were: law enforcement jurisdiction; maintenance of water drainage canal system running through the Golf Course; impact of inconsistency with the design of neighboring homes on Comprehensive Development Master Plan; continuity of easements on the Golf Course; maintenance and protection of County water well; impact on residents who enjoy 99-year covenant restricting use of the land to a golf course; agricultural waste disposal permits; maintenance of connection sewer system, and more.

In reaching his conclusion, the Regional Director does not state what factors he considered and analyzed with regard to the myriad jurisdictional conflicts raised by the Local Authorities. Given the Regional Director's failure to adequately address the Local Authorities' concerns, he failed to comply with the BIA Handbook's requirements and the mandate for stricter scrutiny required by Section 151.11(b), thus abusing his discretion. In addition, the Decision was arbitrary and capricious, and otherwise not in accordance with the law. This trust acquisition implicates serious jurisdictional and land use conflicts in numerous areas, several of which are addressed below.

a. The Regional Director Failed to Consider Immense Jurisdictional Conflicts in the Delivery of Police Protection and Emergency Services Arising From the Trust Acquisition Under § 151.10(f).

The Regional Director failed to reasonably and prudently review the issues raised by the Local Authorities regarding the contentious relationship between the Tribe and County's law enforcement. The BIA Handbook specifically requires that the BIA "consider jurisdictional issues identified in response to the Notice of Application," and to "give reasonable and prudent review of all credible information received or obtained independently."[56]

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[56] Dept. of Interior, BIA Handbook p. 26.

The Miami-Dade Police Department (the "Miami-Dade PD") has had a number of clashes with the Tribe's police department (the "Tribal PD") over conflicting positions on the scope of the jurisdiction granted to the Tribal PD versus that reserved to the Miami-Dade PD. In its Objection, the State Attorney explained the state of affairs between these factions.[57] Granting trust status would complicate the exercise of state criminal jurisdiction over crimes committed on the Property. The State of Florida presently has criminal jurisdiction over Indian lands located within the State of Florida.[58] The only exception would be lands or crimes excepted by a specific Act of Congress.[59] The first jurisdictional concern is that Miami-Dade PD would cease regular patrolling of the Property if it is placed into trust. The Tribe posits that lands taken into trust after the enactment of the Indian Civil Rights Act in 1968 were not affected by legislation enacted pursuant to Public Law 280, like section 285.16, Florida Statutes. Thus, the Tribe asserts that "State assumption of jurisdiction does not apply" because "ALL of [their] reservations were acquired after 1968."[60] The State Attorney makes clear that her office espouses opposing views on jurisdiction. The jurisdictional conflicts for law enforcement are crystal clear. Yet, the Regional Director dismisses these concerns with the statement that the parties exhibited a "willingness" to cooperate.[61] That statement is troubling in light of the State Attorney's unambiguous statement that the office's concerns are:

> prompted by the Tribe's continued *refusal to meet* with the State Attorney's Office to discuss a cooperation agreement for the prosecution of criminal cases; the *demonstrated lack of cooperation by the Tribe* in the prosecution of tribe members; and the statement by representatives for the Tribe suggesting that the State's existing jurisdiction is limited in any area other than the Miccosukee Reserved Area.

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57 See State Attorney Objection.
58 See Section 285.16 Florida Statutes.
59 See Nevada v. Hicks, 121 S.Ct. 2304 (2001).
60 See Letter from Tribe to State Attorney dated October 20, 2003.
61 Decision p. 6.

State Attorney Objection p.1.

The Tribe's position on jurisdiction has caused numerous clashes with the Local Authorities. Most notably, the Tribe impeded, rather than assisted, law enforcement in matters related to the prosecution of Tribal members. The most compelling example was the case cited in the State Attorney Objection regarding the prosecution of Tribal member, Kirk Douglas Billie ("Billie"). Billie stole another Tribe member's vehicle on the MRA and drove the vehicle into the County in order to destroy it by dumping it into a canal. Tragically, the vehicle contained Billie's two young children who drowned. Billie was charged and convicted with second-degree murder. As recounted by the State Attorney, the prosecution was a 'procedural nightmare' because the crime began in federal jurisdiction on the Tribe's reserved area, but culminated with the lethal act committed in state jurisdiction. The Tribe would not cooperate with the production of witnesses and refused all requests to assist the State in the trial.[62]

Similarly, in a more recent example, Tribal PD was accused of mishandling its first response to a car crash where one person was killed. The Florida Highway Patrol alleges they were turned away by the Tribal PD only to later learn that the Tribe had no jurisdiction over the matter.[63] Numerous examples of jurisdictional clashes abound as a result of the opposing views of jurisdiction held by the State and the Tribe.[64] Placing this Property into trust would invite these clashes into the Kendale Lakes neighborhood, placing an undue burden on its residents. The Property is located in a densely populated neighborhood where clashes among law enforcement could jeopardize the safety of those living on and near the Golf Course.

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62 The murder conviction was ultimately affirmed on appeal in 2007.

63 See Jon Tayler, Miccosukee Tribe Again Avoids Lawsuit over Fatal 2009 Car Crash, Miami New Times, July 10, 2012 at Appendix "F."

64 See Gus Garcia Roberts, Miccosukee Tribe Keeps Quiet About Series of Traffic Deaths, Broward New Times, May 14, 2009 at Appendix "G."

Moreover, the Tribe's ability to provide timely emergency services to the Property is doubtful, given the great distance between the MRA and the Property (over 25 miles away) or the Casino and the Property (over 9 miles away in a high traffic area). In 2008, the IBIA vacated the regional director's decision in Jefferson County v. Southwest Regional Director for similar law enforcement reasons.[65] In that case, the IBIA found the regional director failed to respond to the law enforcement jurisdiction concerns raised by Jefferson County. The county argued that the great distance between the reservation and the trust-land made it impossible for the tribe to provide effective emergency services. The IBIA stated:

> The Regional Director acknowledged the County's argument that the 'tribe would have difficulty providing services,' but did not respond to that concern, explain why it was not warranted, or otherwise address it.[66]

Because of this lack of response or explanation, the IBIA found the regional director failed to meet the higher standard of scrutiny for jurisdictional concerns. The IBIA stated:

> We agree with the County that the Decision does not reflect any consideration of the Tribe's ability to provide services such as police or fire protection to the Eyerly property, or whether the County must nonetheless maintain such service obligations as a matter of public health and safety for lands owned in trust for the Tribe for which it receives no tax revenues.[67]

Here, in addressing the County's concerns, rather than give them greater weight, as required by section 151.11(b), the Regional Director dismisses them with statements such as, "the State has experience in dealing with Indian trust land issues" or the purported "willingness" to address them.[68] These statements are unwarranted, based on a mistake of fact, and do not respond to, explain, or outweigh the County's jurisdictional concerns.

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65 Jefferson County, Oregon, Board of Commissioners v. Northwest Regional Director, BIA, 47 IBIA 187, 200-01 (2008)

66 Id. at 200.

67 Id. at 200-01.

68 Decision p. 6.

After concluding that the admitted jurisdictional conflicts could be "resolved or mitigated either through the existing jurisdictional scheme or by cooperative agreement with the local authorities," the Regional Director notes the potential for a formal cooperation agreement between the Tribe and law enforcement to address jurisdictional issues.[69] That statement is not supported by the evidence on the record. A review of the correspondence attached to the State Attorney Objection and the Tribe's Response demonstrates that the parties were not cooperating, and had little prospect of reaching agreement. Specifically, each party attached letters that were exchanged between the State Attorney and the Tribe over several months in 2003. In her letters, the State Attorney repeatedly requested a meeting with the Tribe to explore a cooperation agreement regarding coordination of law enforcement and other matters. The Tribe, on the other hand, in their letters responding to the State Attorney's repeated requests, refused to meet, and instead, placed obstacles in the way of such a meeting.[70] The tone of the letters from the Tribe's attorneys illustrates the contentious relationship between the parties. Tellingly, the letters are dated almost a decade ago, and yet to date, no cooperation agreement has ever been reached. Such a blithe conclusion by the Regional Director leads one to question whether he analyzed or even reviewed the State Attorney Objection and supporting documents. As such, the decision was an abuse of discretion.

The substantial jurisdictional issues between the Local Authorities and Tribe cannot be easily dismissed by the statement that the parties "have exhibited the willingness to address them."[71] While the statement may have been true, it does not outweigh the serious jurisdictional concerns raised by the Local Authorities. These concerns are exacerbated because of the Property's location in a densely-populated urban area surrounded by adjacent homes. The homes

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69 Decision p. 6.

70 See Exhibits to Tribe's Response.

71 Decision p. 6.

that are adjacent to the Property, and actually abut the Golf Course, would encounter first-hand the impact of these problems. Questions will arise, such as: Who to call in an emergency? Who should have jurisdiction if a burglar is seen in a home, who then runs into the backyard and onto the Golf Course? Should the Miami-Dade PD respond if the Tribal PD has been called, or vice versa? What happens if both respond and are on site? Which government has the authority to prosecute or take a person into custody? Which government has the authority to investigate or preserve evidence? What about an incident on the Golf Course involving persons who are not Tribal members? If the trust acquisition goes forward, the checkerboarding and jurisdictional conflicts will only get worse.[72] Police officers must determine jurisdiction for every call based on where the call is coming from at or near the perimeter of the Golf Course.

These are very real conflicts that will have a negative impact on all of the families who live on or near the Golf Course. Even with a "no change in use" purportedly anticipated by the Tribe, the change in law enforcement will have a grave impact on the community.

Another supporting reason given by the Regional Director is that the Miami-Dade PD and Tribal PD have concurrent jurisdiction agreements in place, and presumably, the Regional Director assumes that the parties would again enter into such agreements. These statements ignore or fail to analyze the concurrent jurisdiction agreements. If the Regional Director would have analyzed the agreements, he would have realized that they were reached long ago and under very different circumstances that do not apply to the Property.[73]

In 1978, the Tribe had jurisdiction only over the lands in the MRA. Those lands are located in remote areas of the Everglades. The Tribe had no jurisdiction over adjacent lands, where many of its members lived. At the time, the County provided police services to the

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72 See Map of Golf Course at Appendix "A."

73 See Concurrent Jurisdiction Agreements at Appendix "H."

Tribe's dependent settlements and enterprises outside of the MRA, but because of the remote location of those areas, the Miami-Dade PD did not routinely patrol them. The Tribe, thus, requested the County grant them concurrent jurisdiction to patrol those remote areas with their own Tribal PD. The County agreed, and the parties entered into the first concurrent jurisdiction agreement in 1978. Thereafter, the County agreed to extend the Tribe's concurrent jurisdiction area to lands in the western part of the County, but no further east than the Tribe's Casino on Krome Avenue. The last of these extensions was granted almost 15 years ago in 1999. A look at the County map shows that concurrent jurisdiction ends before the area becomes population-dense, and is restricted to lands within the Everglades.[74] Concurrent jurisdiction in a populated area was never contemplated by these agreements. None of the concurrent jurisdiction agreements permit the Tribe to have jurisdiction outside of the Everglades or the Miami-Dade PD to have jurisdiction on the MRA.

Moreover, the County Manager, as head of the Miami-Dade PD at the time, expressed his position that once the Property was placed into trust, the Miami-Dade PD "would no longer routinely patrol the area."[75] The Tribe, on the other hand, rebutted that statement, noting in their Response that their "contacts with the Miami-Dade Police Department indicate there will continue to be patrolling in the general area."[76] The Regional Director relied on the Tribe's rebuttal statement to conclude that the Miami-Dade PD "has stated that it will not cease community patrolling of the area should the property be accepted into trust." That conclusion is problematic for two reasons. First, it is based on unsupported hearsay by the Tribe, which

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74 See Map of Western Miami-Dade County at Appendix "I."

75 See State Attorney Objection and County Objection.

76 See Tribe's Response p. 5. The Tribe further states it would promptly document the source of the statement, but no such supporting documentation appears on the record.

directly contradicts the statement by the actual head of the Miami-Dade PD.[77] Second, it tends to show that the Regional Director misunderstands the relationship between the Miami-Dade PD and the Tribal PD. The Regional Director seems to believe that the Miami-Dade PD should continue to patrol the Property after it is placed into trust, even though such is not the position of the Tribe. The Regional Director is mistaken about the jurisdictional conflicts between the Tribe and Miami-Dade PD. Accordingly, the Regional Director's mistaken understanding renders his decision erroneous, and arbitrary and capricious.

Next, the Regional Director arbitrarily mentions that the Tribal PD already patrols the Tamiami Trail,[78] as if to imply that such patrolling would somehow affect patrolling in Kendale Lakes. It would not. The Tamiami Trail is nine (9) miles of densely-populated urban surface-streets away from the area of Tamiami Trail patrolled by the Tribe. Thus, the Tribe's patrolling of the Tamiami Trial is irrelevant to the patrolling of the Property.

In sum, the law enforcement jurisdictional issues are substantial and have not been resolved. The Regional Director abused his discretion by granting the application without giving the required greater weight to the County's concerns and simply citing to irrelevant, mistaken or mischaracterized information to support his conclusions. Placing additional non-contiguous land into trust will continuously increase the conflicts between the competing police forces, and ultimately threaten the health and safety of the general public. Consequently, the Regional Director's complete failure to consider these serious jurisdictional conflicts is a violation of the agency's own rules and is arbitrary and capricious, an abuse of discretion, and otherwise not in accordance with the law.

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[77] The head of the Miami-Dade PD was the County Manager at the time; however, the position of County Manager was eliminated and the head of the Miami-Dade PD is now the County Mayor.

[78] The Regional Director actually calls the road the "Tamiami Highway." That is wrong. Its name is the "Tamiami Trail."

b. The Regional Director Failed to Consider Numerous Jurisdictional and Land Use Conflicts with Zoning and Comprehensive Planning Under § 151.10(f).

Accepting the Property into trust will result in a patchwork of jurisdiction, disrupting the Kendale Lakes community and interfering with the ability of the County and other local governments to protect and preserve the health and safety of the public. Again, the Regional Director failed to give greater weight to the numerous jurisdictional conflicts raised by the County regarding threats to the County's drinking water supply, zoning regulations, water flow rights and drainage easements on the Property, as well as enforcement of a 99-year restrictive covenant limiting use of the Property to a golf course.

i. Drinking Water Supply

The Property is located within the West Wellfield Interim Protection Area as well as within the Alexander Orr/Southwest Wellfield Protection Area Complex. These wellfield protection areas supply the drinking water to residents in central and southern areas of the County. The County's current land use restrictions provide protection of the drinking water resources in that area of the County by prohibiting certain land uses (e.g. solvent use and storage) which threaten the water supply in the underlying aquifer. The underlying Biscayne aquifer is characterized by high transmissivity and high hydraulic conductivity. Recent research by the U.S. Geological Survey have documented the presence of huge voids in the limestone which create flow zones resulting in much faster transport of contaminants than expected. Loss of regulatory jurisdiction over the Property could result in land uses and activities that inherently increase the potential for catastrophic consequences to the area's drinking water resources.

Given that the Property is located within an estimated 8,000 feet of a water supply production well, it is critical for the County to maintain the ability to implement land use control and monitor land use activities at the Property, including regular inspections and groundwater

monitoring. This will ensure the ability to detect any threats to the water supply, take appropriate regulatory action if a threat is detected and ensure the timely implementation of corrective actions to minimize and mitigate the threat. The Regional Director's Decision ignored this critical concern.

ii. Comprehensive Development Master Plan

In accordance with State law, the County enacted a comprehensive plan for the purpose of setting goals, policies and objectives for the orderly development of the County to best promote public health, safety, morals, order, convenience, prosperity and the general welfare.[79] A comprehensive plan tends to create predictability and reliability with regard to land use plans, and in effect maintains and preserves property values. Removing the Property from the County's jurisdiction will undermine the County's ability to protect the general welfare of the public, and other property owners within the County will likely face reduced property values. Here, given that the Property sits inside of the Kendale Lakes subdivision and is contoured in the shape of a horseshoe, hundreds of homes abut the Golf Course with many families living inside the pocket of the horseshoe. Inconsistent jurisdictions and planning decisions in this compact, densely-populated, urban-area will negatively impact the ability of local governments to provide cohesive and consistent governance.

iii. Zoning Regulations

The acquisition of the Property disrupts current and future cohesive zoning regulation by the County. The County has enacted a zoning code for the purpose of promoting the health, safety, morals and general welfare of the public. Courts have recognized the problems that can result from this type of checkerboard ownership of land because it prevents a community from

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[79] Fla. Stat. § 163.3161.

cohesively regulating activities, such as effective zoning.[80] Some specific problems that result are complications in leasing both trust and non-trust properties, disputes over access and rights-of-way, disruption of large scale planning, regulation of natural resources, and application of different jurisdictional codes and regulations to different land owners. The Property is not adjacent to a reservation; instead it is contiguous to the homes of residents of the Kendale Lakes community. Despite the proximity of these parcels, they will be governed by different regulations, different land use planning, different jurisdictions, and will have different tax status. The regulatory and jurisdictional chaos that will result is entirely predictable, and the Regional Director failed to address these significant concerns in his Decision.

iv. Water Flow Rights and Easements

The Regional Director also failed to give sufficient weight to the County's concerns regarding the impact on the water flow rights and maintenance easements that run through the Property. The Kendale Lakes North Section 1 Plat (93-1), imposes the following restrictions on the Property:

> The canal as shown on the attached Plat is hereby dedicated to the perpetual use of the public for drainage and other proper purposes.
> . . .
>
> The drainage easements as shown on the attached plat are hereby dedicated to the perpetual use of the pubic for the installation and maintenance of drainage facilities.
>
> The canal maintenance easement and maintenance access easements as shown on the attached plat are hereby dedicated to the perpetual use of the public for these stated purposes.
>
> The use of individual wells will not be permitted in this subdivision except for air conditioners, swimming pools or irrigation.

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[80] See generally City of Sherrill v. Oneida Indian Nation, 544 U.S. 197, 200 (2005) ("checkerboard of state and tribal jurisdiction . . . would 'seriously burde[n] the administration of state and local governments' and would adversely affect landowners neighboring the tribal patches." (citing Hagen v. Utah, 510 U.S. 399, 421(1994)).

> The use of individual sewage disposal systems will not be allowed in this subdivision.
>
> All bodies of water designated on the attached plat as lakes are hereby dedicated to the joint and several use of property owners abutting said lakes, reserving a public right in said lakes as storage basins for storm water discharge.
>
> There shall be no use made of said lakes which would interfere with storm water discharge into said lakes from drainage easements shown on the attached plat. Drainage flow rights across and through certain lakes in the form of 50 foot driveway connection from Kendale Lakes Drive (S.W. 68th Street) to tracts Q&R, as shown on the attached plat, will not be permitted except at those certain areas designated as utility and common access easements.

These covenants, easements and restrictions are critical to the proper functioning of the community. Water flow rights, especially for storm drainage, are an essential source of protection against flooding. In flood prone south Florida, such protection cannot be threatened. To do so jeopardizes the lives and property of the residents of the Kendale Lakes community. Unless the Tribe enters into a cooperation agreement with the County and local governments regarding the maintenance and preservation of these water flow rights and easements, accepting the Property into trust places the health and safety of the public at risk.

v. The 99-Year Use Restriction Covenant

Another jurisdictional conflict raised by the County, which was all but ignored by the Regional Director, is the impact of the acquisition on the right of the community to enforce a 99-year restrictive use covenant (the "Golf Covenant") placed on the land. The Plat shows that the Golf Covenant requires the land be used as a golf course for 99 years from the date of inception of this subdivision in 1972.[81] Specifically,

> Tract "B", as shown on the attached plat, shall not be permitted for any use other than a golf course, or a country club or operations

[81] See Plat 93-1 at Appendix "C."

> incidental thereto. These restrictions shall continue for ninety-nine (99) years or until released or revised by the Board of County Commissioners of Dade County, Florida, with the consent of seventy-five percent (75%) of the owners of property in this subdivision and the owners of property within 150 feet of the exterior boundaries of this subdivision.

Sixty years remain before the Golf Covenant expires. A change in use is, therefore, prohibited unless the County Commissioners consent and 75% of residents and other neighbors approve the change in use. This restriction has been relied upon by the owners of homes abutting the Golf Course and in the vicinity; yet, it is clear from the Tribe's Response that they do not intend to be bound by it. The Tribe indicates they are not required to keep the same use on the Property.[82] However, it is the County's position that the Golf Covenant is not rendered unenforceable by the placement of the Property into trust.[83] These opposing views on the enforceability of the restrictive Golf Covenant may lead to years of costly litigation with affected residents in the event the Tribe attempts to change the Property's use before the Golf Covenant expires in the year 2071.

The Regional Director recognized the County's concern regarding the enforceability of the Golf Covenant, but stated no position or analysis addressing the issue. This lack of analysis, and lack of concern, especially in light of the greater deference the Regional Director was required to give to the County's concerns, renders his decision arbitrary and capricious.

vi. Provision of Water and Sewer Services

Similarly, another jurisdictional conflict arises from the provision of water and sewer services by the County to the Property. The Property's location inside of the subdivision of Kendale Lakes makes it subject to the platting restrictions. These restrictions forbid individual

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82 See Tribe's Response p. 3.

83 See Friends of East Willits Valley v. County of Mendocino, 101 Cal. App. 4th 191, 123 Cal. Rptr. 2d 708 (Cal. Ct. App. 2002) ("We hold that federal law does not void prior restrictions on land agreed to before the land passed into trust.").

water wells and individual sewage disposal systems.[84] In addition, Water & Sewer Department regulations forbid septic tanks on the Property. The Tribe, based on its Response, would take the position that they are not subject to such restrictions. For example, the Regional Director notes the Tribe has "not indicated any plans to discontinue the practice" of paying for water and sewer services.[85] This statement implies the Tribe believes it has other options. It does not. Discontinuing services is not an option in this neighborhood. Defiance of these regulations jeopardizes the environment and the health and safety of the residents who share the Golf Course. The Regional Director failed to consider the impact and to give greater weight to these grave concerns.

Based on these numerous jurisdictional conflicts and potential land use conflicts, it is unclear how the Regional Director could summarily conclude, without explanation or analysis, that "no substantial problems" or unique jurisdictional issues would result from the acquisition. The Regional Director's decision was, therefore, arbitrary and capricious, an abuse of discretion, and in violation of the law.

c. The Regional Director Failed to Consider the Potential for Gaming and the Resulting Jurisdictional Conflicts Under § 151.10(f).

Although the Tribe did not expressly indicate any intention to engage in gaming on the Property, the Regional Director should have considered the potential for gaming, including the significant jurisdictional conflicts. Because the Tribe has not proven that the proposed trust lands are located within the boundaries of the Tribe's historical reservation, it is not clear that gaming may be conducted under the Indian Gaming Regulatory Act. Nevertheless, placing the land into trust is the first step in obtaining the right to conduct gaming on the Property. The Tribe's potential ability to conduct gaming in this subdivision presents serious concerns to the

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84 See Plat 93-1 restrictions, quoted at section 5.b.iv., *supra*.

85 See Decision p. 4.

County in terms of traffic, potential air pollution, land use, conflicts and safety and law enforcement issues.[86] Because of this potential, the Regional Director should have considered and analyzed the corresponding jurisdictional concerns; the failure to do so constitutes an abuse of discretion.

The Tribe should not be permitted to end-run procedures designed to protect local communities from the impacts of gaming by being equivocal in regard to whether it intends to conduct gaming on the land, and thereby avoid analysis of potential substantial community impacts. This end-run approach was rejected in Village of Ruidoso.[87] In that case, the tribe disclaimed any intention to game on the proposed trust land, but the decision found that the gaming checklist was a relevant concern and should have been further evaluated. One of the factors influencing the decision in Ruidoso was that the tribe had an existing gaming facility and the relationship of that facility to the proposed trust acquisition was not explained in the BIA's decision. Here, the Tribe claims they have no current plans to change the use of the Property; however, such a statement acknowledges that it may only be a matter of time before the Tribe attempts to obtain authority to conduct gaming.

The Decision does not discuss the potential for gaming, or consider the resulting jurisdictional conflicts; rather, the Regional Director relied on the statement that no change in use is currently anticipated. Thus, he has permitted the first step in the possible end-run on procedures designed to protect local communities from the impacts of gaming. This constitutes an abuse of discretion.

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[86] See Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak, 132 S.Ct. 2199, 2212 (2012) (stating, "The Secretary thus takes title to properties with an eye toward how tribes will use it," thereby authorizing neighbors to raise gaming concerns in objecting to acquisition under 25 U.S.C. § 465).

[87] Village of Ruidoso, New Mexico v. Albuquerque Area Director, 32 IBIA 130, 139 (1998).

6. The Regional Director Failed to Comply With 25 C.F.R. § 151.10(h).

a. The Regional Director Failed To Comply With Part 516 of the Interior Department Manual.

Federal statutes and regulations governing fee-to-trust acquisitions require an analysis under the National Environmental Policy Act (NEPA) of 1969, as amended.[88] Congress passed the NEPA to promote the preservation of environmental resources, and encourage the Federal Government to work "in cooperation" with state and local governments.[89] In passing the NEPA, Congress mandated that all federal agencies follow certain procedures when dealing with environmental concerns.[90] For instance, when determining whether to grant a request for acquisition of land into trust status, Congress mandated that the Regional Director examine the "extent to which the applicant has provided information that allows the Secretary to comply with 516 DM 6, appendix 4,[91] NEPA Revised Implementing Procedures, and 602 DM 2, Land Acquisitions: Hazardous Substances Determinations."[92] In addition to complying with these congressional mandates, the Department established its own policy "[t]o consult, coordinate, and cooperate" with state and local governments, and to "give consideration to those activities that succeed in best addressing State and local concerns."[93]

The Council on Environmental Quality, created under the NEPA, has established binding regulations for the purpose of implementing the NEPA.[94] Under 40 C.F.R. § 1501.03, federal agencies are required to perform an "environmental assessment" ("EA") in accordance with regulations of the particular agency. An EA may, in turn, require the preparation of an

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88 42 U.S.C. § 4321, et seq.; 25 C.F.R. § 151.10(11).
89 42 U.S.C. § 4331(a).
90 See 42 U.S.C. § 4332.
91 516 DM 6 states that bureau requirements for the Bureau of Indian Affairs are located in Chapter 10, which was formerly Appendix 4.
92 25 C.F.R. § 151.10(h).
93 516 DM 1.2(E).
94 40 C.F.R. § 1500.3.

"environmental impact statement" ("EIS").[95] The purpose of an EIS, in part, is to "provide full and fair discussion of significant environmental impacts and shall inform decision makers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment."[96] In addition, the Department must compile the required information in good faith to ensure a "reasoned decision after balancing the risks."[97] To that end, the EIS "must consider all significant environmental consequences that can reasonably be expected to flow from the decision," and "[a]n EIS cannot safely ignore clear environmental consequences of the decision ... on the ground that another statement will be forthcoming later."[98]

An agency is generally not required to prepare an EA or EIS if the action falls under a "categorical exclusion."[99] However, there are numerous exceptions to the categorical exclusions, and the Secretary must implement a "checklist" to evaluate each exception.[100] In addition, for actions that normally fall under a categorical exclusion, one must nevertheless ensure that the action has been "subjected to sufficient environmental review," and, if an exception applies, "further analysis and environmental documents must be prepared."[101] NEPA requires "that an agency affirmatively develop a reviewable administrative record supportive of a decision not to file an impact statement."[102]

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95 40 C.F.R. § 1501.4.

96 40 C.F.R. § 1502.1.

97 Suffolk County v. Secretary of Interior, 562 F.2d 1368, 1375 (5th Cir. 1977) (citations omitted).

98 Id. at 1377.

99 40 C.F.R. § 1508.4.

100 516 DM 10.5; 516 DM 2, Appendix 2.

101 40 C.F.R. § 1508.4; 516 DM 2.3(A)(3).

102 Nucleus of Chicago Homeowners Ass'n v. Lynn, 524 F.2d 225, 231 (7th Cir. 1975) (citing First National Bank of Chicago v. Richardson, 484 F.2d 1369, 1381 (7th Cir. 1973); Scherr v. Volpe, 466 F.2d 1027, 1032 (7th Cir. 1972)).

While a short statement of no significant impact may comply with NEPA, it must nevertheless be "grounded on supporting evidence."[103] To that end, NEPA "commands 'full good faith consideration of the environment,' not formalistic paper shuffling between agency desks."[104] Further, an agency decision must '"articulate a satisfactory explanation' for its action," rather than stating a mere conclusion.[105] According to the "Exception Checklist for BIA Categorical Exclusions," if any exception on the list applies, the agency must prepare an EA. Thus, an agency cannot rely on a categorical exclusion if an exception applies, and, even if the agency finds that no exceptions apply, it must still engage in sufficient meaningful review and provide an explanation to support its conclusion.

The Regional Director failed to comply with the requirements established under the NEPA, including those outlined in 25 C.F.R. § 151.10(h). Section 151.10(h) requires that the Regional Director consider "[t]he extent to which the applicant has provided information that allows the Secretary to comply" with the provisions of the NEPA. Here, it is unclear what information, if any, the Tribe submitted to the Regional Director in order to permit a meaningful review of potential environmental concerns, nor is it clear what the Regional Director considered, if anything, in relying on a categorical exclusion. Moreover, it was an abuse of discretion for the Regional Director to rely on a categorical exclusion and not require an EA or EIS in light of the significant environmental concerns raised by the County's Objection.

The Regional Director found that the acquisition of the Property into trust did qualify under a categorical exclusion; however, the Decision does not state whether the Regional

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103 Id. (citing Hanly v. Mitchell, 460 F.2d 640, 646 (2'd Cir. 1972), cert. denied, 409 U.S. 990).

104 Environmental Defense Fund, Inc. v. Corps of Engineers of U.S. Army, 492 F.2d 1123, 1129 (5th Cir. 1974) (citing Calvert Cliffs' Coordinating Comm. v. Atomic Energy Commission, 449 F.2d 1109, 1113 n. 5 (D.C. Cir. 1971)).

105 Butte County, Cal. v. Hogen, 610 F.3d 190, *3 (D.C. Cir. 2010) (citing Taurus Records, Inc. v. DEA, 259 F.3d 731, 737 (D.C. Cir. 2001)).

Director considered the exceptions to the categorical exclusions, nor does it state what information he reviewed in arriving at the decision that the categorical exclusion applied. The Decision states that the "record reflects compliance with 516 DM 6," but does not point to anything in the record to support such a conclusion. Moreover, only a Phase 1 Environmental Site Assessment ("Phase 1 ESA") appears on the record. The County's concerns regarding its drinking water supply, water flow rights and storm drainage were not addressed or even considered in that report.

Notably, in 2008, the Secretary conducted a review of the Regional Director's preliminary decision analysis and found it to be deficient.[106] Specifically, the Secretary indicated that the County raised numerous public health and safety concerns, and therefore, the Regional Director should have conducted an EA. The purpose for the EA was to "determine whether or not the change in jurisdiction contemplated by the proposed action will result in a significant impact on public health and safety."[107] The Secretary advised the Regional Director to "work with the [Tribe] to resolve these issues." The Secretary then directed the Regional Director to provide a new consultation with the local governments pursuant to 25 C.F.R. § 151.11(b) once the concerns of the local governments were addressed with the Tribe.

The Regional Director, however, did not conduct an EA. Neither did he prepare an EIS. Instead, the record reveals that only a Phase 1 ESA was performed. The purpose of the Phase 1 ESA is to determine the presence of hazardous materials on the Property to evaluate landowner liability under environmental regulations, like CERCLA.[108] The Phase 1 ESA is not designed to evaluate the concerns raised by the County or by NEPA. Even at the direction of the Secretary, the Regional Director failed to conduct an EIS or an EA. Moreover, the issues were never

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106 See Memorandum, from Secretary to Regional Director dated April 16, 2008.
107 See id.
108 See Phase 1 ESA p.3.

addressed with the County. In fact, the County and other local governments were never given an opportunity for follow up commentary throughout the entire decade that it took this decision to make its way through the BIA. This is true even though the Secretary directed the Regional Director to conduct a new consultation with local governments in 2008.[109]

All of these offenses by the Regional Director lead to the inescapable conclusion that he abused his discretion, and the Decision is arbitrary and capricious, and must be reversed.

i. The Regional Director Abused His Discretion in Failing to Follow the Agency's Own Regulations.

In addition to erroneously relying on a categorical exclusion, the Regional Director failed to follow the Department's regulations. Pursuant to 516 DM 1.2(E), the Department established its own policy "[t]o consult, coordinate, and cooperate with other Federal agencies and, particularly, State, local, Alaska Native Corporations, and Indian tribal governments in the development and implementation of the Department's plans and programs affecting environmental quality and, in turn, to give consideration to those activities that succeed in best addressing State and local concerns." Where an agency fails to follow its own regulations, its actions are reviewable under the APA.[110] Here, the Department did not consult or coordinate with the County on any environmental-related concerns, nor did the Department interview local government officials as part of the Phase I ESA. Moreover, by failing to conduct an EA or prepare an EIS, the Regional Director violated the agency policy to "give important weight to environmental factors ... in order to achieve a proper balance between the development and utilization of natural, cultural, and human resources and the protection and enhancement of

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109 See id.

110 Thomas Brooks Chartered v. Burnett, 920 F.2d 634, 642 (10111 Cir. 1990) (citing Service v. Dulles, 354 U.S. 363 (1957)).

environmental quality."[111] Because the Regional Director failed to comply with the Department's own regulations, the Decision cannot be upheld.

ii. The Regional Director Failed to Comply With Part 602 of The Interior Department Manual.

In addition, the Phase I ESA contains significant limitations such that it cannot be relied on in place of a more extensive EA. For example, the Phase 1 ESA indicates under "limitations and exceptions of assessment" that independent verification of the validity of this information was beyond the proposed scope.[112] The report also indicates that it was completed by the BIA and the Tribe, and performed for the explicit use of the Secretary and the user.[113] Furthermore, under the section entitled "Interviews," the report states, "GES conducted interviews with local government officials."[114] However, the report indicates no names of any such officials. By contrast, the report also states that it interviewed "key individuals in an attempt to obtain . . . special information regarding possible environmental conditions at the Property."[115] In that section, the names of those interviewed are prominently displayed. It is clear that GES only interviewed representatives of the Tribe. The absence of any names of government officials purportedly interviewed leads to the conclusion that GES never interviewed any local government officials. Consequently, the Phase I ESA reports were not prepared in a neutral and impartial manner; as such the reports constitute mere "formalistic paper shuffling."[116]

Courts have cautioned that "[e]nvironmental impact statements are not confidential or internal documents for agency eyes alone," and the requirements of NEPA were "intended not only to insure that the appropriate responsible official considered the environmental effects of

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111 See 516 DM 1.2(D).
112 Phase 1 ESA p. 7.
113 Id. p. 8.
114 Id. p. 27.
115 Id. p. 27.
116 See Environmental Defense Fund, Inc., 492 F.2d at 1129.

the project, but also provide Congress ... with a sound basis for evaluating the environmental aspects of the particular project or program."[117] Moreover, NEPA requires the agency "to take a 'hard look' at environmental consequences," which includes a requirement to "objectively evaluate[]" environmental projects.[118] Because the Tribe participated in the Phase I ESA preparation and the report specifically indicates that it lacks independent verification, the Regional Director failed to fulfill the requirements of 25 C.F.R. § 151.10(h), relevant case law, as well as the Department policies requiring consultation with local government officials.

Given all of these concerns, the Regional Director should have required an EA and an EIS in compliance with the requirements of NEPA. The Phase I ESA prepared by the Tribe in conjunction with the BIA is unreliable and does not address significant environmental hazards and concerns. Thus, the failure to comply with § 151.10(h) constitutes an abuse of discretion, and the Regional Director's decision was arbitrary and capricious.

7. Local Residents Object to the Application

Local residents of Kendale Lakes and surrounding areas object to the Property's placement into trust. The BIA failed to notify local residents regarding the Tribe's Application a decade ago in 2003. As a result, neighbors of the Property were never given the opportunity to evaluate the Application and voice their concerns. Fast forward to 2013, upon learning of the County's appeal, the residents have organized to protest the Regional Director's Decision.[119] The group has gathered over 110 pages of petitions containing signatures of over 1260 homeowners and residents of the area to protest placing the Property into trust.[120] Residents are concerned over a potential change in use occurring after the Property has been placed into trust.

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117 Id. at 1140 (citing Save Our Ten Acres v. Kreger, 472 F.2d 463, 466 (5th Cir. 1973)).

118 City of Lincoln City, 229 F.Supp.2d at 1126 (citing Robertson v. Jtfethow Valley Citizens Council, 490 U.S. 332, 348, 109 S.Ct. 1835 (1989)).

119 See Homeowners' Resolution at Appendix "J."

120 See Homeowner Petitions at Appendix "K."

As the United States Supreme Court recognized in Match-E-Be-Nash v. Patchak, "neighbors to the 'use' [like these Kendale Lakes residents] are reasonable—indeed, predictable challengers of the Secretary's decision: Their interests, whether economic, environmental, or aesthetic, come within § 465's regulatory ambit."[121] Accordingly, the concerns of local residents must be heard. As stated by the community organizers, they coordinated the petition drive because: "We wanted our community voice added to the county's action because, to our knowledge, affected residents never had the chance to speak in behalf of their concerns."[122]

CONCLUSION

The historical record could not be more clear. The Tribe was not under federal jurisdiction in 1934, as required to have land placed into trust under the Indian Reorganization Act, as interpreted by Carcieri. Additionally, the Regional Director failed to consider the criteria outlined in 25 C.F.R. § 151.11 and to give the deference and greater weight to the concerns of local governments and affected residents. These abuses of discretion resulted in an arbitrary and capricious decision. For these reasons, the Regional Director's Decision to accept the Property into trust must be vacated.

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121 See Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak, 132 S.Ct. 2199, 2212 (2012) (stating, "The Secretary thus takes title to properties with an eye toward how tribes will use it," thereby authorizing neighbors to raise gaming concerns in objecting to acquisition under 25 U.S.C. § 465).

122 See Richard Yager, Kendale Lakes residents protest designation of Miccosukee Land, Kendall Gazette, January 22, 2013 at Appendix "L."

Dated: January 25, 2013

Respectfully submitted,

R. A. CUEVAS, JR.
Miami-Dade County Attorney
Stephen P. Clark Center, Suite 2810
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By: _____
Craig H. Coller
Jorge Martinez-Esteve
Ileana Cruz
Email: ileanac@miamidade.gov
Assistant County Attorneys

CERTIFICATE OF SERVICE

Pursuant to 25 C.F.R. § 2.12, the undersigned hereby certifies that on this 25th day of January 2013, the foregoing Opening Brief of Miami Dade County, Florida, was served on the following parties in the manner indicated.

VIA OVERNIGHT

Board of Indian Appeals
Office of Hearings and Appeals
U.S. Department of the Interior
801 North Quincy Street
Arlington, VA 22203

United States Department of the Interior
Eastern Regional Director
Bureau of Indian Affairs
545 Marriott Drive, Suite 700
Nashville, TN 37214

Nick Holt, Esq.
Knoxville Field Office
Office of the Solicitor
U.S. Department of the Interior
800 S. Gay Street, Suite 800
Knoxville, TN 37929

U.S. MAIL (CERTIFIED)

U.S. Department of Interior
Office of the Regional Solicitor
75 Spring Street, S.W., Suite 304
Atlanta, GA 30303-3311
Associate Solicitor – Indian Affairs

Office of the Solicitor
MS 6513 – MIB
U.S. Department of the Interior
1849 C Street, N.W.
Washington, DC 20240

Assistant Secretary – Indian Affairs
U.S. Department of the Interior
MS 4141 – MIB
18 and C Street, NW
Washington, DC 20240

Bernardo Roman, III, Esq.
Tribal Attorney
Miccosukee Tribe of Indians of Florida
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Honorable Colley Billie
Chairman, Miccosukee Indian Tribe
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Governor State of Florida
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Tallahassee, FL 32399-0001

Katherine Fernandez Rundle
State Attorney
Eleventh Judicial Circuit of Florida
E.R. Graham Building
1350 N.W. 12th Avenue
Miami, FL 33136-2111

I declare under penalty of perjury that the foregoing is true and correct.

Ileana Cruz

UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS

Miami-Dade County, Florida, Appellant, v. Acting Eastern Regional Director, Bureau of Indian Affairs, Appellee.	)	Docket No. IBIA 12-152

APPENDIX TO OPENING BRIEF OF APPELLANT,
MIAMI-DADE COUNTY, FLORIDA

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Miami-Dade County Attorney
Stephen P. Clark Center, Suite 2810
111 N.W. 1st Street, Suite 2810
Miami, Florida 33128
Telephone: (305) 375-5151
Fax: (305) 375-5634

By: Craig H. Coller
Jorge Martinez-Esteve
Ileana Cruz
Assistant County Attorneys

APPENDIX

Tab	
A	Map of Golf Course (color aerial view); A.1 Map of Golf Course (black and white, non-aerial view)
B	Map of Kendale Lakes
C	Plat of Kendale Lakes North Section 1 ("Plat 93-1")
D	Tribe Business Plan
E	Jay Weaver, Tribal Chairman's Binge Spending Led to Bad Blood The Miami Herald, July 7, 2012
F	Jon Tayler, Miccosukee Tribe Again Avoids Lawsuit over Fatal 2009 Car Crash, Miami New Times, July 10, 2012
G	Gus Garcia Roberts, Miccosukee Tribe Keeps Quiet About Series of Traffic Deaths, Broward New Times, May 14, 2009
H	Concurrent Jurisdiction Agreements
I	Map of Western Miami-Dade County
J	Homeowner's Resolution
K	Homeowner Petitions
L	Richard Yager, Kendale Lakes residents protest designation of Miccosukee Land, Kendall Gazette, January 22, 2013

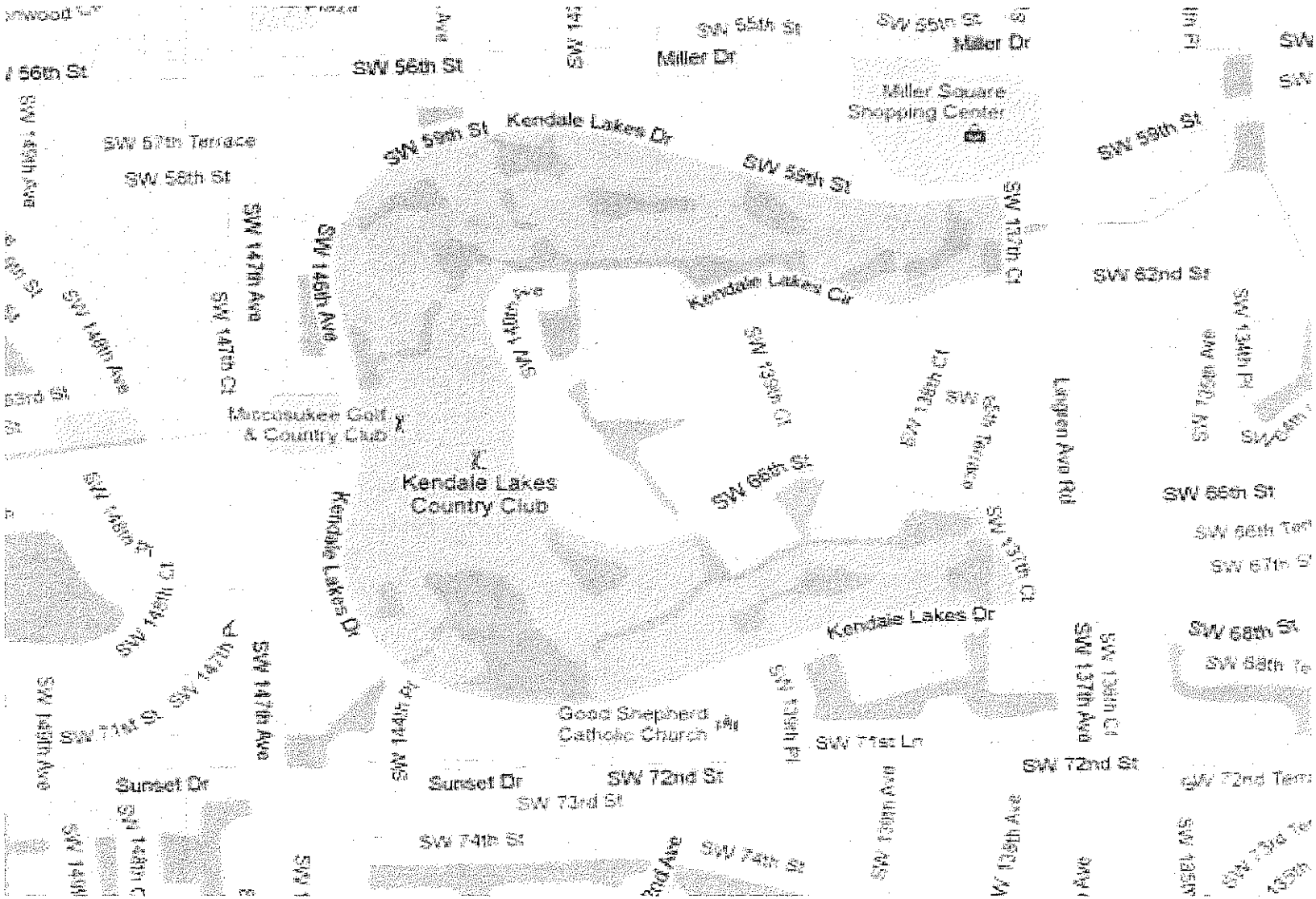
A

Miami-Dade County, Florida v. Acting Eastern Regional Director, Bureau of Indian Affairs,
Docket No. IBIA 12-152

Composite Appendix A

Miami-Dade County, Florida v. Acting Eastern Regional Director, Bureau of Indian Affairs,
Docket No. IBIA 12-152

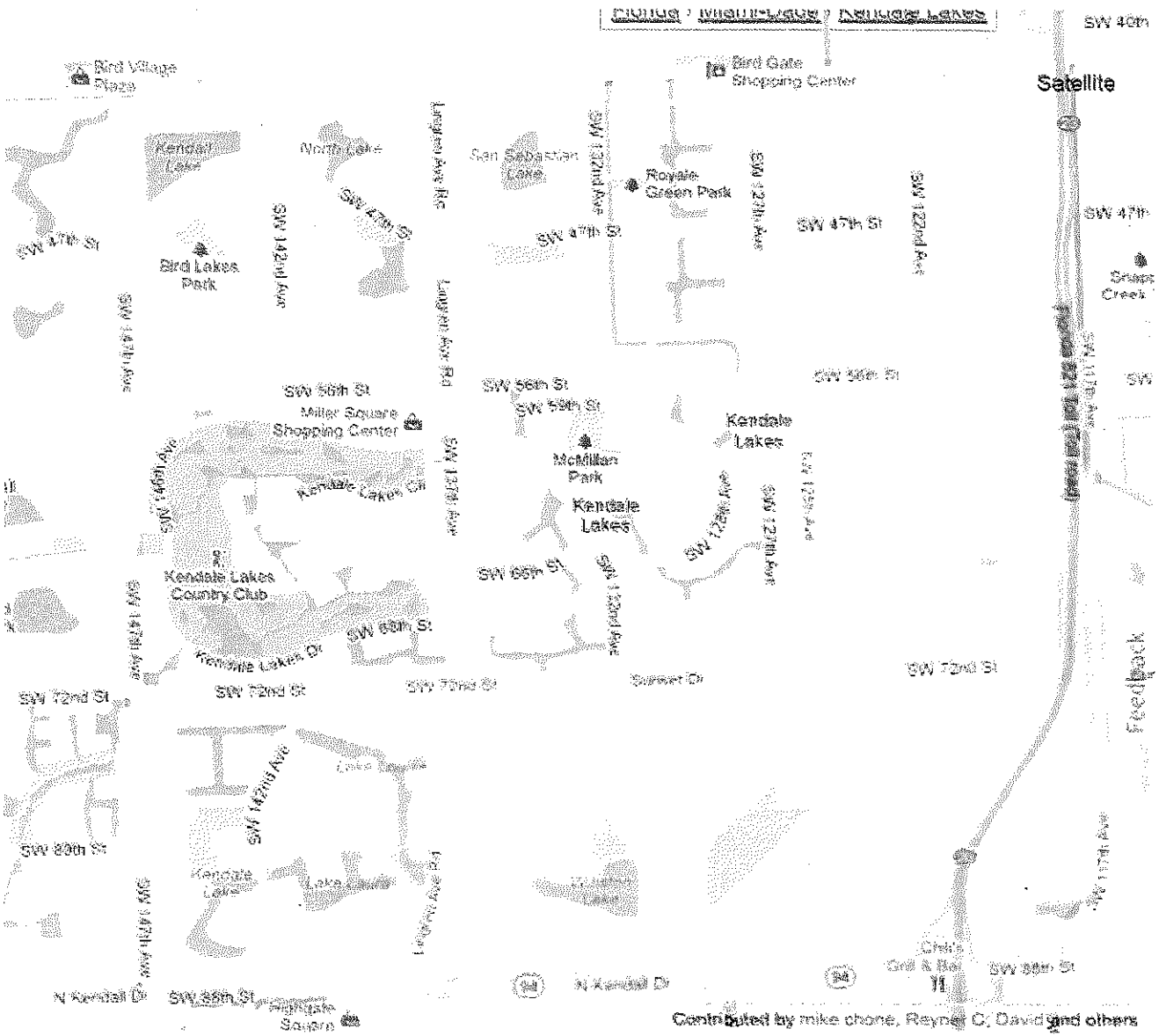
Appendix A.1



B

Miami-Dade County, Florida v. Acting Eastern Regional Director, Bureau of Indian Affairs
Docket No. IBIA 12-152

Appendix B



C

93-1

Kendale Lakes North Section One

A PORTION OF SECTION 27-54-39 AND A REPLAT OF "WEST MIAMI MANOR FIRST SECTION" (PB. 23, PG. 35)
DADE COUNTY FLORIDA

PREPARED BY
Schwebke-Shiskin & Assoc. Inc.

OWNERS (CONT.)

[illegible]

LEGAL DESCRIPTION:

KNOW ALL MEN BY THESE PRESENTS: THAT [illegible] FLORIDA CORPORATION HAVE CAUSED TO BE MADE THE ATTACHED PLAT OF "KENDALE LAKES NORTH SECTION ONE" THE SAME BEING A SUBDIVISION OF A PORTION OF SECTION 27, TOWNSHIP 54 SOUTH, RANGE 39 EAST AND A REPLAT OF "WEST MIAMI MANOR FIRST SECTION" ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 23 AT PAGE 35 OF THE PUBLIC RECORDS OF DADE COUNTY, FLORIDA [illegible]

[illegible]

... LYING AND BEING IN DADE COUNTY, FLORIDA.

DADE COUNTY PLAT RESTRICTIONS:

[illegible]

OWNER'S PLAT RESTRICTIONS:

[illegible]

IN WITNESS WHEREOF: [illegible] HAVE CAUSED THESE PRESENTS TO BE SIGNED IN THEIR CORPORATE NAMES BY THEIR PRESIDENTS, THEIR CORPORATE SEALS TO BE HEREUNTO AFFIXED AND ATTESTED BY THEIR SECRETARIES ON THIS 9 DAY OF February A.D. 1972.

BY: [signature] PRES. ATTEST: [signature] SECY.

BY: [signature] PRES. ATTEST: [signature] SECY.

ACKNOWLEDGEMENT:

STATE OF FLORIDA
COUNTY OF DADE } SS

[illegible]

WITNESS MY SIGNATURE AND OFFICIAL SEAL THIS 9 DAY OF February A.D. 1972.
MY COMMISSION EXPIRES December 13, 1975. [signature] NOTARY PUBLIC STATE OF FLA. AT LARGE

MORTGAGE:

KNOW ALL MEN BY THESE PRESENTS:
THAT SUNSET LAKES OF MIAMI, INC., THE OWNER AND HOLDER OF THOSE CERTAIN MORTGAGES [illegible] DOES HEREBY CONSENT TO THIS PLAT AND JOINS IN THE FOREGOING DEDICATIONS.

IN WITNESS WHEREOF: SUNSET LAKES OF MIAMI, INC., A FLORIDA CORPORATION, HAS CAUSED THESE PRESENTS TO BE SIGNED IN ITS CORPORATE NAME BY ITS PRESIDENT, ITS CORPORATE SEAL TO BE HEREUNTO AFFIXED AND ATTESTED BY ITS SECRETARY THIS [illegible] DAY OF [illegible] A.D. 1972.

SUNSET LAKES OF MIAMI, INC.

BY: [signature] PRES. ATTEST: [signature] SECY.

ACKNOWLEDGEMENT:

STATE OF FLORIDA
COUNTY OF DADE } SS

[illegible]

WITNESS MY SIGNATURE AND OFFICIAL SEAL THIS 25 DAY OF Feb. A.D. 1972.
MY COMMISSION EXPIRES 12-2-75 [signature] NOTARY PUBLIC STATE OF FLA. AT LARGE

MORTGAGE:

KNOW ALL MEN BY THESE PRESENTS:
[illegible]

IN WITNESS WHEREOF I HAVE HEREUNTO SET MY HAND AND SEAL THIS 11 DAY OF February A.D. 1972.

BY: [signature] LOUIS MERWITZER WITNESS: [signature]

ACKNOWLEDGEMENT:

STATE OF FLORIDA
COUNTY OF DADE } SS

[illegible]

WITNESS MY SIGNATURE AND OFFICIAL SEAL THIS 11 DAY OF February A.D. 1972.
MY COMMISSION EXPIRES 12-13-75 [signature] NOTARY PUBLIC STATE OF FLORIDA AT LARGE

MORTGAGE:

KNOW ALL MEN BY THESE PRESENTS:
[illegible]

IN WITNESS WHEREOF WE HAVE HEREUNTO SET OUR HANDS AND SEALS THIS 11 DAY OF February A.D. 1972.

BY: [signature] HELEN MERWITZER
BY: [signature] ISADORE U. ABRAMS WITNESS AS TO ALL: [signature]
BY: [signature] FLORENCE ABRAMS

ACKNOWLEDGEMENT:

STATE OF FLORIDA
COUNTY OF DADE } SS

[illegible]

WITNESS MY SIGNATURE AND OFFICIAL SEAL THIS 11 DAY OF February A.D. 1972.
MY COMMISSION EXPIRES 12-13-75 [signature] NOTARY PUBLIC STATE OF FLA. AT LARGE

SURVEYOR'S CERTIFICATE:

[illegible]

APPROVALS:

THIS PLAT WAS APPROVED BY THE DADE COUNTY, FLORIDA, BUILDING AND ZONING DEPARTMENT THIS 12 DAY OF May A.D. 1972
BY: [signature] DIRECTOR

THIS PLAT WAS APPROVED BY THE DADE COUNTY, FLORIDA, PLANNING DEPARTMENT THIS 12 DAY OF May A.D. 1972
BY: [signature] DIRECTOR

THIS PLAT WAS APPROVED BY THE DADE COUNTY, FLORIDA, PUBLIC WORKS DEPARTMENT THIS 22 DAY OF May A.D. 1972
BY: [signature] DIRECTOR

THIS PLAT WAS APPROVED [illegible] BOARD OF COUNTY COMMISSIONERS OF DADE COUNTY, FLORIDA, THIS 16 DAY OF [illegible] A.D. 1972.

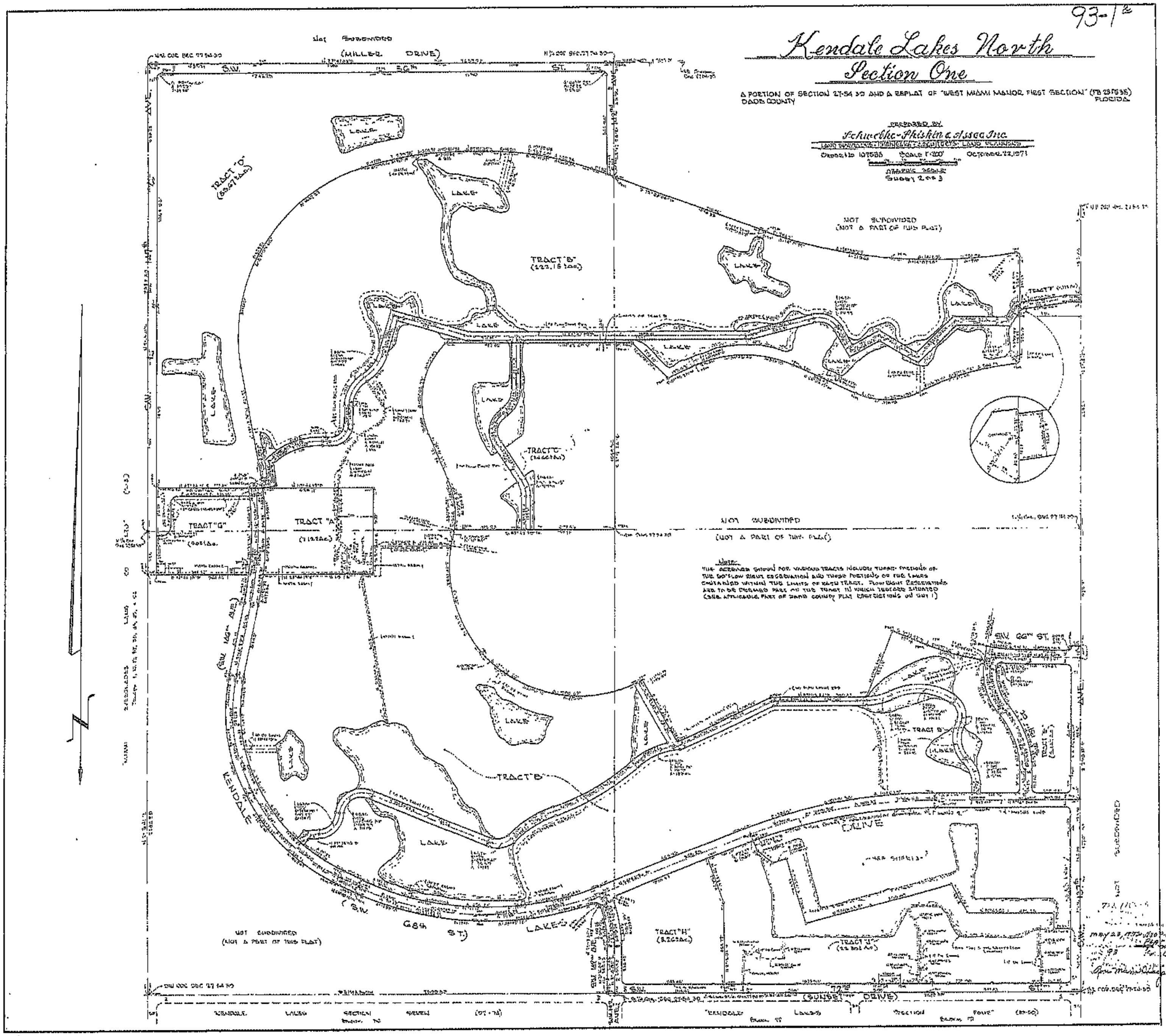
BY: [signature] MAYOR BY: [signature] DEPUTY CLERK

FILED FOR RECORD THIS 23 DAY OF MAY A.D. 1972 AT 4:10 P.M. IN BOOK 93 OF PLATS AT PAGE 1 OF THE PUBLIC RECORDS OF DADE COUNTY, FLORIDA. THIS PLAT COMPLIES WITH THE LAWS OF THE STATE OF FLORIDA, AND METROPOLITAN DADE COUNTY, FLORIDA.

E. B. LEATHERMAN, CLERK OF THE CIRCUIT COURT
BY: [signature] DEPUTY CLERK

SEAL VOID

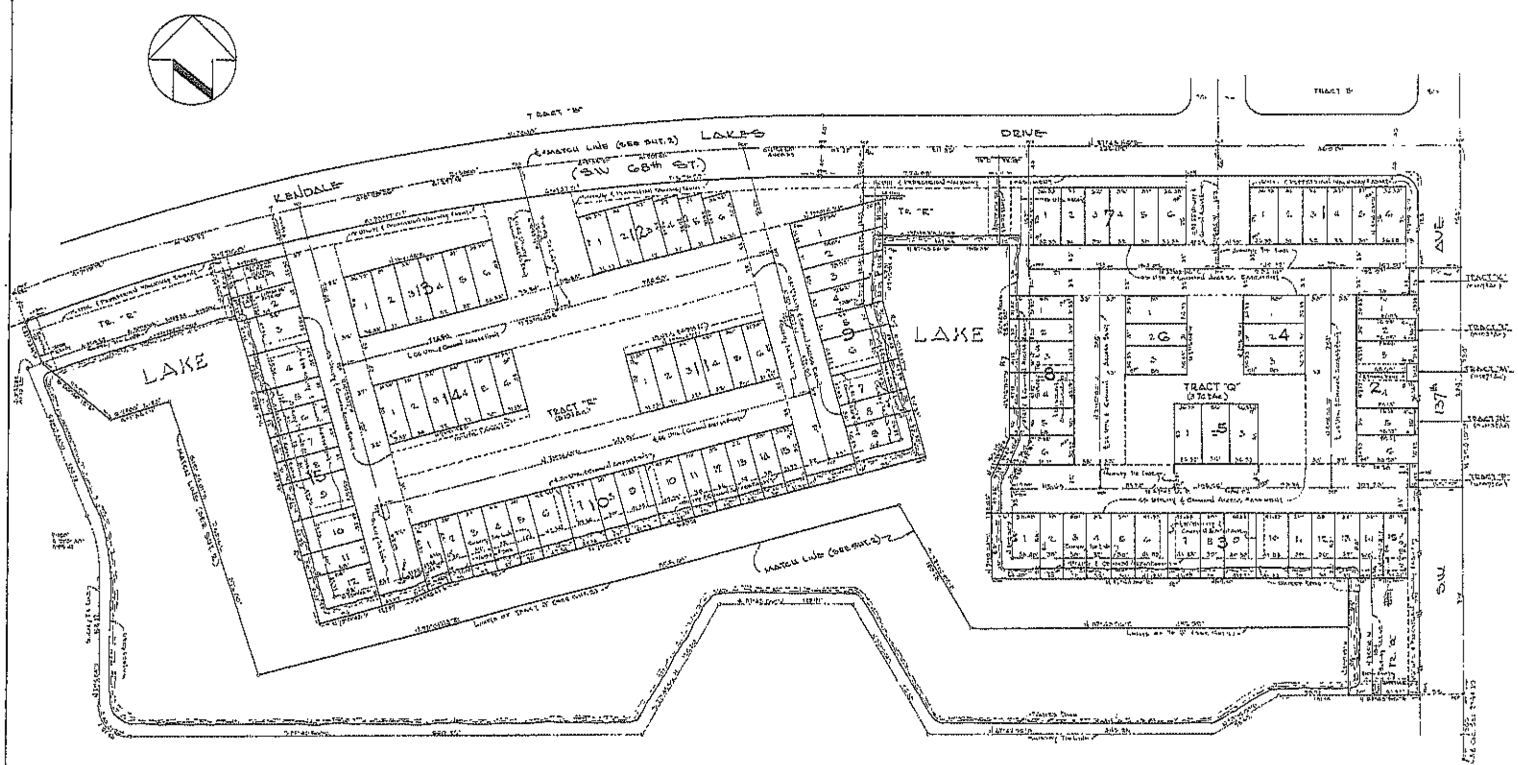
SEAL VOID


93-1/2
Kendale Lakes North
Section One
A PORTION OF SECTION 27-54-39 AND A REPLAT OF "WEST MIAMI MANOR FIRST SECTION" (PB 23 PG 35) DADE COUNTY FLORIDA
PREPARED BY
Schwebke-Shiskin & Assoc. Inc.
NOT SUBDIVIDED
(NOT A PART OF THIS PLAT)
TRACT "B"
TRACT "C"
TRACT "D"
TRACT "A"
TRACT "G"
TRACT "H"
TRACT "J"
LAKE
KENDALE LAKES DRIVE
(MILLER DRIVE)
(SUNSET DRIVE)

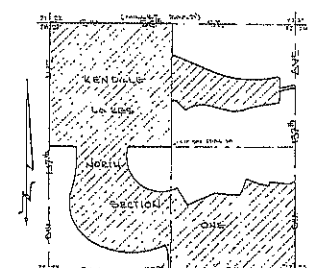
SHEET 3 OF 3 93-1[3]

Kendale Lakes North Section One

A PORTION OF SECTION 27-54-39 AND A REPLAT OF "WEST MIAMI MANOR FIRST SECTION" (PB 23, PG 35)
DADE COUNTY FLORIDA



PREPARED BY:
Schwebke-Shiskin & Assoc. Inc.



LOCATION MAP

MAY 23, 1972

D

Miccosukee Tribe of Indians
of Florida

August 30, 2010

Mr. Franklin Keel, Director
USDOI - BIA
Eastern Regional Office
545 Marriott Drive, Suite 700
Nashville, TN 37214

RE: Miccosukee Golf Course Trust Application

Dear Mr. Keel:

The Miccosukee Tribe of Indians of Florida understands that a Business Plan for the Miccosukee Golf & Country Club is needed to expedite the processing of our Trust applications for these Tribal lands. Enclosed please find said Business Plan.

Thank you for your continued support and assistance to the Tribe. Please contact Mr. Steve Terry of my staff at the below number, Ext. 2243, if you have any questions.

Sincerely,

Colley Billie
Tribal Chairman

PC: Randall Trickey, BIA
Mike Hernandez, Finance
Steve Terry, Real Estate Services

STEVE TOZER

BUSINESS PLAN

2011

TABLE OF CONTENTS

Introduction

The Miccosukee Golf & Country Club, designed by Mark Mahannah, was purchased in 2001 by the Miccosukee Tribe and is located in the heart of Miami. This 27-hole facility offers a challenging layout and beautiful views and annually hosts the Miccosukee Championship PGA Nationwide Tour.

The property situated on 140 acres of land includes a Pro Shop, Lighted Practice Facility, Maintenance Building, Grill Room, Olympic-size Pool, Tennis Courts and Banquet Facilities that can host up to 350 guests for corporate meeting, weddings, birthdays, bar mitzvahs, etc. Hours of operation are Monday – Sunday, 7am-9pm. The golf course is a gem for the membership and local player. Approximately 30,000 rounds of golf are played over the 27 holes of golf.

The Miccosukee Golf & Country Club and the golf industry in general, face many challenges in the upcoming years. Many continued improvements are still needed including refurbishing of the current irrigation system, a potential new clubhouse and the building of a golf car storage area and all are essential in maintaining its competitive edge in being and establishing the Club as a leader in the local community; however, the net profit of the operation continues to fall short of breaking even and is still supported from the Miccosukee Tribe. This business plan strives to address the need to reduce expenditures and continue to increase potential sources of revenue so that the Miccosukee Golf & Country Club can be a profitable operation.

Objectives

The staff at the Country Club is dedicated to drive four main Principles in order to achieve a positive outcome for all club operations. The four main Principles of Customer Service, Financial Stability, Public Access and Effective Operations all staff to focus its efforts and resources in the areas that are most important to golfers. All recommendations in this plan relate directly to one or more of the Principles.

The intent of the plan is to simplify the golf experience, yet maintain the integrity of the facility and continue to provide high quality customer service, course conditions, and affordable golf to as many people as possible.

Mission

To establish the Miccosukee Golf & Country Club as a leader in the South Florida community and provide members and guests with a unique and enjoyable club environment by providing the highest quality golf experience through the traditions and integrity of the game of golf.

To create and build life-long relationships with our members and guest, while also employing the traditions of the Miccosukee Tribe and providing the family members of the Miccosukee Tribe employment opportunities within the Club.

Vision

The Miccosukee Golf and Country Club will:

- Be recognized as a premier facility golf operation by all golfers.
- Receive increased recognition from the golfing public as an operation with high standards, integrity and high quality customer service.
- Deliver competitively priced golf to members and guests.
- Enhance the playability and condition of all three nine holes of golf.
- Maintain and operate The Miccosukee Golf and Country Club in a manner so it continues to be recognized as a desired site for the PGA Nationwide Tour tournament and other PGA Section and Amateur events.
- Maintain and operate The Miccosukee Golf and Country Club in such a manner that the Club remains competitive with comparable facilities.

Principles

As the Miccosukee Golf and Country Club plans for the future, club leadership wishes to clarify the primary focus and goals of the Club. In order to accomplish this, staff has developed a list of governing values that have been endorsed by the Miccosukee Council which address the core issues within the Club. These include: customer service, financial stability and effective operations.

Primary Goals

- Customer Service: Meet or exceed customer expectations for users and create "Raving Fans" of the Club.
- Financial Stability: The facility should strive to be financially self sustaining.
- Effective Operations: Policies for all Club operations should focus on consistency, simplicity and accountability.

Customer Service

Meet golfer expectations regarding the available services and facilities at each golf complex.

- Provide affordable and accessible food and beverage at the clubhouse.
- Provide additional food and beverage service in the banquet clubhouse.
- Conduct periodic customer surveys to ensure a clear understanding of customer expectations.
- Maintain golf course conditions to retain and attract PGA Tour and USGA competitions.
- Provide patrons with access to the beverage cart at least once per nine holes.

Financial Stability

The main goal of the club is to increase golf rounds, grow the membership base and overall revenue in order for the club to be a profitable enterprise.

RATES

	Weekday	3pm Twilight	Weekends	After 11am	3pm Twilight
July 1st – September 30th					
Public	$40	$30	$50	$45	$30
Wholesale/Tournament	$36	$28	$45	$36	$28
October 1st – November 15th					
Public	$55	$40	$65	N/A	$50
Wholesale/Tournament	$40	$35	$50	N/A	$35
November 16th – April 14th					
Public	$75	$50	$85	N/A	$60
Wholesale/Tournament	$60	$40	$70	N/A	$50
April 15th – June 30th					
Public	$45	$40	$55	$50	$40
Wholesale/Tournament	$40	$35	$50	$40	$35

All prices plus tax

Membership Rates

Corporate..... $7,000 per year
Premier..... $3,900 per year
Family..... $3,000 per year
Individual..... $2,000 per year
Swimming
- Single (yearly)..... $300
- Single (6 months)...$250
- Family (yearly).....$500
- Family (6 months)...$375

Miccosukee Golf & Country Club	Cash Flow & Break Even Analysis				
	Base Year 2010	2011	2012	2013	2014
Total Revenue	$ 1,842,395	$ 2,167,543	$ 2,397,095	$ 2,559,516	$ 2,638,307
Cost of Sales	$ 445,649	$ 450,105	$ 454,606	$ 459,152	$ 463,744
Gross Profit	$ 2,288,044	$ 2,617,648	$ 2,851,701	$ 3,018,668	$ 3,102,051
Payroll & Related Expenses	$ 1,414,047	$ 1,428,187	$ 1,456,750	$ 1,471,318	$ 1,500,744
Department Operating Costs	$ 356,600	$ 363,732	$ 371,006	$ 378,427	$ 385,996
Undistributed Operating Expenses	$ 247,019	$ 251,959	$ 256,998	$ 262,138	$ 267,381
Total Operating Expenses	$ 2,017,666	$ 2,043,878	$ 2,084,754	$ 2,111,883	$ 2,154,121
Net Operating Income Before Debt Service	$ (620,920)	$ (326,440)	$ (142,265)	$ (14,519)	$ 20,442
Debt Service	$ -	$ -	$ -	$ -	$ -
Net Cash Flow	$ (620,920)	$ (326,440)	$ (142,265)	$ (14,519)	$ 20,442

Miccosukee Golf & Country Club	5 - Year Financial Proforma				
Revenues	**2010**	**2011**	**2012**	**2013**	**2014**
Green Fees	$ 857,536	$ 1,114,797	$ 1,282,017	$ 1,410,218	$ 1,466,628
Golf Car Fees	$ 74,575				
Golf Merchandise	$ 115,425	$ 121,196	$ 127,256	$ 129,801	$ 132,398
Other Golf Revenue	$ 196,175	$ 205,984	$ 216,283	$ 220,609	$ 225,021
Food & Beverage	$ 373,784	$ 392,473	$ 412,097	$ 420,339	$ 428,746
Minor Operating Revenue	$ 9,600	$ 10,080	$ 10,584	$ 10,796	$ 11,012
Membership Fees	$ 215,300	$ 226,065	$ 237,368	$ 242,115	$ 246,957
Total Revenue	$ 1,842,395	$ 2,167,543	$ 2,397,095	$ 2,556,516	$ 2,638,307
Cost of Sales					
Golf Merchandise	$ 75,603	$ 76,359	$ 77,123	$ 77,894	$ 78,673
Food & Beverage	$ 370,046	$ 373,746	$ 377,483	$ 381,258	$ 385,071
Total Cost of Sales	$ 445,649	$ 450,105	$ 454,606	$ 459,152	$ 463,744
Gross Profit	$ 1,396,746	$ 1,717,438	$ 1,942,489	$ 2,097,364	$ 2,174,563
Payroll & Related Costs					
Golf Operations	$ 295,617	$ 298,573	$ 304,544	$ 307,589	$ 313,741
Golf Course Maintenance	$ 886,830	$ 895,698	$ 913,612	$ 922,749	$ 941,203
Food & Beverage	$ 231,600	$ 233,916	$ 238,594	$ 240,980	$ 245,800
Total Payroll & Related Costs	$ 1,414,047	$ 1,428,187	$ 1,456,750	$ 1,471,318	$ 1,500,744
Departmental Operating Costs					
Golf Operations	$ 65,000	$ 66,300	$ 67,626	$ 68,979	$ 70,359
Food & Beverage	$ 238,600	$ 243,372	$ 248,239	$ 253,204	$ 258,268
General & Administration	$ 53,000	$ 54,000	$ 55,141	$ 56,244	$ 57,369
Total Departmental Operating Costs	$ 356,600	$ 363,732	$ 371,006	$ 378,427	$ 385,996
Income Before Undistributed Operating Costs	$ (373,901)	$ (74,481)	$ 114,733	$ 247,619	$ 287,823
Undistributed Operating Expenses					
Management	$ 5,000	$ 5,100	$ 5,202	$ 5,306	$ 5,412
Utilities	$ 102,834	$ 104,891	$ 106,989	$ 109,129	$ 111,312
Insurance	$ 50,268	$ 51,273	$ 52,298	$ 53,344	$ 54,411
Property Taxes	$ 88,917	$ 90,695	$ 92,509	$ 94,359	$ 96,246
Total Undistributed Operating Espenses	$ 247,019	$ 251,959	$ 256,998	$ 262,138	$ 267,381
Net Operating Income	**$ (620,920)**	**$ (326,440)**	**$ (142,265)**	**$ (14,519)**	**$ 20,442**

Effective Operations

One of the overall primary goals of the Club is to simplify and standardize as many of the procedures and policies within the Golf, Food & Beverage and Course Maintenance Division as possible. To maximize and utilize standard operating procedures will allow all divisions to effectively manage their own respective division and ultimately create an environment that lends itself to becoming independent and yet inter-dependent on the overall success of each operation.

Conclusion

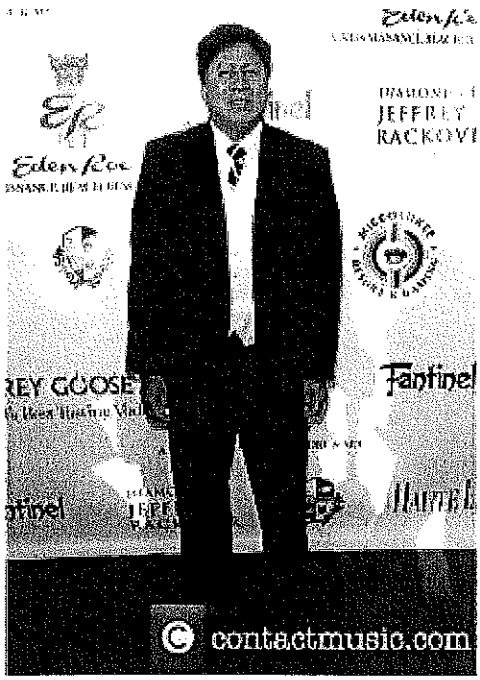
The members and those particular individuals that play golf at the Miccosukee Golf & Country Club have a great deal of pride in the fact that they have the opportunity to regularly play a PGA Nationwide Tour event that is well known and is capable of hosting prestigious golf events. While big events impact the individual players' ability to get on the golf course a couple of times during the course of the day, from a big picture perspective, the economic impact from these outside tournament events greatly improves the financial bottom line of the club.

Management believes that with a quality product and good service the financial gains and benefits will follow.

The Miami Herald
Posted on Sat, Jul. 07, 2012

Tribal chairman's binge spending led to bad blood

BY JAY WEAVER
jweaver@MiamiHerald.com



Miccosukee Chairman Billy Cypress arrives at a gala hosted by famed lawyer Roy Black in 2009.

Back in 1992, Billy Cypress traveled from Miami to Washington, D.C., to testify about the Miccosukee Tribe's savior.

"Gambling puts our people back to work," Cypress, the 600-member tribe's chairman, told a panel of U.S. senators. "It has replaced federal funding and unemployment benefits as the solution to our economic problems."

Over the next couple of decades, the tribe's ever-expanding gaming enterprise on the edge of the Everglades would, indeed, generate millions for each and every Miccosukee. But the financial windfall would also boomerang on Cypress, a dynamic leader who had brought the defiant West Miami-Dade tribe and himself into the modern world.

Last week, his own people turned against him in a once-unimaginable lawsuit: Cypress is accused of stealing $26 million from the Miccosukee Tribe of Indians and spending the money like an addict on gambling, travel, shopping, jewelry, real estate and luxury cars.

Among the eye-openers cited in the suit: Cypress made a total of $11.5 million in ATM withdrawals at casinos around the country between 2006 and 2009, drawing the money on the tribe's investment account with Morgan Stanley Smith Barney. In March 2009, at the height of the nation's recession, Cypress withdrew a total of $1.43 million from the account — mostly in transactions of $10,300 each — at the MGM Grand in Las Vegas, according to the suit. He also made similar ATM withdrawals at The Mirage in Vegas, the Beau Rivage in Biloxi, and the Seminole Hard Rock Hotel & Casino near Hollywood, a direct competitor to the Miccosukees.

The racketeering suit, filed in Miami federal court last week, depicts Cypress as a serial "thief" provided "protection" by a coterie of excessively paid professionals, including two former U.S. attorneys, two ex-Miccosukee financial officers and the Miami office of the

brokerage firm Morgan Stanley. Loyal to Cypress, they never alerted other tribal members about his "enormous fraud and theft scheme," the suit says.

"These defendants associated with each other for the common purpose of defrauding the Miccosukee Tribe and the Miccosukee people through ... secretly protecting the illegal conversion and misappropriation by Cypress and others of tribal funds," says the 78-page suit, which called the alleged conspiracy a "criminal enterprise."

Cypress, 61, could not be reached for comment.

His personal lawyers, Guy Lewis, a former U.S. attorney in Miami, and partner Michael Tein, also a former federal prosecutor — both named as defendants in the tribe's suit — did not return calls or emails for comment about their client.

According to the suit, their law firm was paid more than $10 million for unsubstantiated "legal work" representing the tribe itself on tax matters stemming from the unreported distribution of gambling profits to members, as well as individual members such as Cypress for their personal income tax and DUI problems. Lewis and Tein, who also are facing the fallout of a $3.2 million judgment against two other tribal clients found liable in a fatal-car crash case, have been separately sued by the Miccosukees for legal malpractice.

What sets the Cypress suit apart from all other Miccosukee litigation is the simple fact that he's family. For decades, the Miccosukees have kept their own business on the reservation, asserting their sovereign status in countless civil and criminal legal cases with outsiders.

But the ouster of Cypress in late 2009, who was replaced by Colley Billie, the tribe's longtime poker director, has led to an era of bad blood spilling into the public arena, with the firing of employees once close to Cypress and the filing of lawsuits targeting lawyers who once advised him. The power struggle between the two Miccosukees dates to 1987, when Cypress ousted Billie's father, Sonny, setting the stage for his dominant reign as chairman.

Cypress grew up not only on the Miccosukee reservation but in other parts of Florida. His father was an alligator wrestler, moving from attraction to attraction. He completed an associate's degree at Miami Dade College and was just three credits short of a bachelor's in business from Barry University.

The fiercely independent Miccosukee Tribe of Indians, once part of the Seminole nation in Broward County, was best known for its five-mile-long reservation, rough-hewn chickee huts, and airboat rides off the Tamiami Trail. But with their sovereign authority, the Cypress-led Miccosukees were allowed to pursue gambling ventures like their Seminole neighbors to the north.

Cypress' first major accomplishment: the tribe's 2,000-seat bingo hall built on 25 acres at Krome Avenue and Tamiami Trail in 1990 — though a partnership with outside management would lead to years of hostile litigation.

The bingo parlor's profits helped pay for much-needed housing and other modern amenities for tribal members, which boosted Cypress' popularity. "Almost every household has some tribal employment," he boasted to The Miami Herald in a rare interview in 1993.

But Cypress had bigger plans beyond bingo. Despite misgivings by some Miccosukees about gambling's effect on their native culture, Cypress won over tribal members to build a $50 million casino and resort hotel offering bingo-style slot machines and poker. The Miccosukees still use those so-called "Class II" machines. And unlike the Seminoles that feature Las Vegas-style slots, they don't have a revenue-sharing deal with the state.

During the 1990s, Cypress and his tribe also began challenging state and federal authorities over the future of the Everglades and related environmental issues. The tribe's prominent advocate was Dexter Lehtinen, a former U.S. attorney in Miami and husband of Republican congresswoman Ileana Ros-Lehtinen.

"We want everything under the sun," Cypress told The Los Angeles Times in 1999. "Our goal is self-sufficiency."

The Miccosukees really started cashing in on their casino complex in the 2000 era. Flush with huge profits, the tribe started doling out tens of millions of dollars yearly to its members, with each collecting as much as $120,000, according to sources familiar with the distributions. The Miccosukee name and logo also appeared on advertisements at Miami Heat, Dolphins and Marlins venues.

The tribe also spent millions on lobbyists in Washington and Tallahassee to protect its gambling interests, along with contributing to the campaigns of South Florida politicians and others. Also significant, the Miccosukees spent millions more on lawyers such as Lehtinen and Lewis to fight their battles with the Internal Revenue Service, according to court and other public records.

Since 2005, the Miccosukees have been dueling with the IRS over the distribution of unreported gambling profits to members, who are required by law to pay taxes on their personal income. The agency has won several federal court disputes to obtain the tribe's financial records from Morgan Stanley for much of the past decade.

In a malpractice lawsuit against Lehtinen, the tribe admitted in court papers that more than 100 Miccosukee Indians owe the federal government about $25.8 million in back taxes, penalties and interest on income for 2000-05.

The tribe, which says it paid his law firm $50 million for counsel on environmental, income-tax and other legal issues starting in 1992, now wants him to pay damages. Lehtinen, who was fired in 2010, counters that he never misled the tribe about its members' tax obligations, saying that he had recommended that the Miccosukees set a reserve fund to settle with the IRS.

The IRS' probe of the tribe led the agency to suspect that Cypress himself was not reporting all of his income. In 2010, the IRS claimed that he owed the government almost $2.8 million in taxes and penalties on $6.65 million in unreported income from 2003-05. His personal attorneys, Lewis and Tein, contested the claim, saying a lot of that money involved legitimate business expenses and double counting by the government.

About half of his unreported income came from cash advances on his tribe-issued American Express cards, according to IRS records obtained by The Miami Herald. Cypress used tribal funds at hotels, casinos, restaurants, sports venues and on other spending sprees, the agency records show. The IRS says Cypress' income totaled $10.7 million for the three-year period.

But Cypress' potential tax liability for 2006-09 could be much greater, according to the Miccosukee Tribe's latest lawsuit. Consider: In addition to the staggering ATM withdrawals at casinos in Las Vegas and elsewhere, Cypress also used tribe-issued American Express cards to charge $4 million for jewelry, clothingand other expenses during the more recent period.

Cypress also acquired nearly a dozen properties and residences, from Miami-Dade to Panama City Beach, worth a total of $4 million, the suit says.

In effect, the suit alleges Cypress used the Miccosukee Tribe's investment account at Morgan Stanley as his own piggy bank, while footing the bill for meals, travel and other "personal benefits" to please his inner circle of professional advisors who turned a blind eye.

"This is a man who changed over money," said one former Miccosukee employee, who did not want to be identified. "He's not a bad man. He's a man who liked helping other people. But he thought he could get whatever he wanted with money. He learned the technique from the white man."

Among the defendants accused of helping him conceal his alleged thievery from other tribal members: Lehtinen and Lewis, the former U.S. attorneys; Lewis' law partner, Tein; former senior Miccosukee financial officers Miguel Hernandez and Julio Martinez; and Morgan Stanley, the brokerage firm that held the tribe's various financial accounts. Alexander Fernandez, the firm's senior vice president who handled the Miccosukee Tribe as a client, was not named as a defendant but was identified in the suit.

In interviews this past week, some of the defendants said that Colley Billie, the new Miccosukee chairman, and his supporters have smeared Cypress to divert attention from their own ineptitude in managing the tribe.

Lehtinen said this latest suit shows the "rash irresponsibility of the Miccosukee Tribe in always blaming someone else for their problems, instead of themselves."

"I was hired for particular matters," he said. "I never had access to tribal credit card bills or records of withdrawals of tribal funds from Morgan Stanley or elsewhere."

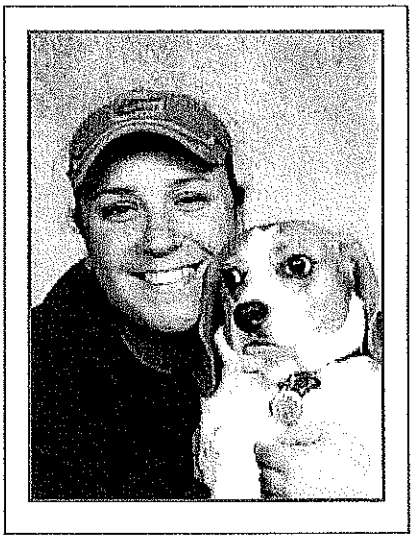
The tribe's former chief financial officer, Martinez, who is accused of playing a key supporting role during Cypress' tenure, said the Miccosukee tribal council under his leadership was fully aware of his spending.

"They were disclosed to the tribal leaders," said Martinez, who now works for the Grand Ronde Tribe in Oregon.

Martinez, who worked for the Miccosukees for more than a decade, called "all of the allegations false and untrue — a complete fabrication."

Miccosukee Tribe Again Avoids Lawsuit Over Fatal 2009 Car Crash

By Jon Tayler
Published Tue., Jul. 10 2012 at 7:00 AM



A wrongful death lawsuit against the Miccosukee Tribe over a fatal car accident on tribal lands has once again run into resistance in the courts.

On January 20, 2009, Coconut Grove resident Tatiana Furry left Miccosukee Resort & Gaming after a night of gambling and drinking and then got into a head-on collision with another vehicle on the Tamiami Trail about four miles from the casino. The crash, which was shrouded in controversy over the way the Miccosukee police investigated it, killed Furry. She was later discovered to have had a blood-alcohol content of .32 at the time of the wreck.

Tatiana's father, John Furry, sued the Miccosukees in December 2010, alleging the resort had served his daughter despite her "habitual addiction" to alcohol and then continued to serve her and allowed her to get into a car and leave despite her visibly drunken state. The Miccosukees claimed the lawsuit violated their tribal sovereign immunity.

The U.S. District Court for the Southern District of Florida agreed with them, and this past June 29, the Eleventh Circuit Court of Appeals upheld that decision. In its ruling, the Circuit Court stated that "the underlying facts of this wrongful death suit... are both straightforward and heartbreaking" but that the U.S. Supreme Court had "made clear that a suit against an Indian tribe is barred unless the tribe has clearly waived its immunity."

Bruce Rogow, the attorney for Furry, tells Riptide that the legal defeat isn't the end of the road for his client or the case.

"We're taking this to the Supreme Court for review," Rogow says. "We feel like we have a much better chance than most."

Rogow believes that the issue of Native American sovereignty is one that the Supreme Court would be interested in addressing and that Furry's case is "especially egregious."

"It's very sad there's no remedy for my client," he says. "If a bar on Miami Beach had done this, there would be a remedy. The fact that an Indian tribe can use this immunity as a shield makes this an interesting case for the court."

If the case is accepted for Supreme Court review, Rogow thinks the Miccosukees, rather than risk losing tribal sovereignty going forward, could be open to a settlement. As of yet, no settlement has been offered.

Attempts to reach either the Miccosukees' attorneys or Furry were unsuccessful.

The Miccosukees have been busy in the courts in recent days. On July 3, the tribe sued its former chairman, Billy Cypress, accusing him of stealing $26 million to use on gambling and real-estate investments. Cypress's lawyers, Guy Lewis and Michael Tein, are also involved in a lawsuit filed by the family of a woman killed in another car accident on the Tamiami Trail in 1998. The two tribe members at fault, Tammy Gwen Billie and Jimmie Bert, have said they don't have the money to pay the family of Liliana Bermudez. Lewis and Tein, meanwhile, were reprimanded by a Miami-Dade appeals court in late June for trying to get the judge for the lawsuit thrown off the case.

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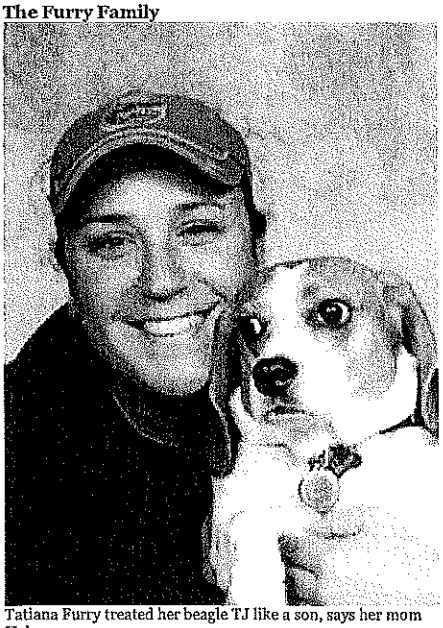
The Miccosukee Tribe Keeps Quiet About a Series of Traffic Deaths

A woman perishes in a collision with an Indian leader's kin. Her family cries cover-up.

By Gus Garcia-Roberts
published: May 14, 2009

The Furry Family



Tatiana Furry treated her beagle TJ like a son, says her mom Helene.

Near dawn on Wednesday, January 21, Glades airboat captain Jesse Kennon was jolted awake by the whirring of helicopter blades over his roof. His first thought: That sounds like Rescue One.

The ruddy-skinned, pony-tailed patriarch of Coopertown had heard Miami-Dade Fire Rescue choppers many times before. He estimates he has seen 50 serious accidents directly outside his place on Tamiami Trail, where Miami drivers and a narrow, two-lane road form a lethal combination.

White-and-chocolate Miccosukee police cruisers were crowded haphazardly around the outline of an accident about 400 feet to the east, their sirens flashing but silent. He'd seen tribal cops and Florida Highway Patrol (FHP) work together at the scene of an accident before, Kennon says, "but this was the first time I'd seen only tribal cops working a crash."

A pair of three-ton vehicles were crumpled and strewn like spent soda cans on opposite sides of the road. A dark-blue Ford Expedition SUV was overturned on the guardrail in the eastbound lane; three of its wheels were in the air, and its fender was ground into the asphalt.

A wrecked gray Nissan Frontier pickup was in the opposite lane. The compacted engine was exposed by a torn-away hood, bearing a deep crater on its driver's side. The left front tire rested on a metal rim, and the right one was twisted perpendicular to the vehicle. The front window was shattered and sunken. The truck looked as if it had been balled up by a giant hand.

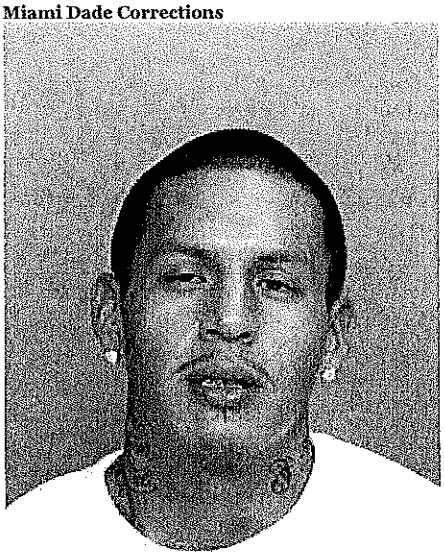
The Frontier belonged to Tatiana Furry, a 31-year-old Kendall yachtswoman who sometimes made trips to the Miccosukee Resort & Gaming casino, about four miles to the east, to play bingo and poker. For her family, a surreal nightmare was about to begin.

Her father, Jack, was finally informed 14 hours after the accident that his daughter had been killed in the collision. Her older brother, Will Furry, says that tribal detective Russell

C. Stiles

Glades airboat captain Jesse Kennon witnessed the aftermath of her fatal accident.

Miami Dade Corrections



The mug shots of Jared Tiger (above) and Kent Billie, two politically connected tribe members who were in the other vehicle.

Barnes told the family that she had fallen asleep and been "internally decapitated," adding that he had personally checked her vitals as the first cop on the scene. Detectives said there were two people in the other vehicle but refused to give their names.

Four months later, Jack Furry and his family have received no further information from the cops — and have found that the sparse account they were given is riddled with inconsistencies and falsehoods.

Other law-enforcement agencies have been misled as well. An FHP sergeant who arrived at the scene an hour after the accident was turned away. "We relied on information from the Miccosukee Police Department," says Capt. Mark Welch. "It wasn't until later that we found out it was in fact not within their jurisdiction."

Though the Miccosukee police have refused to release reports or even an official statement concerning the accident, *New Times* has discovered that the four young Miccosukee men who survived the accident have amassed a combined 17 traffic infractions and nine criminal charges, including DUI, having an open container of alcohol in a vehicle, and cocaine possession. At the time of the accident, the Expedition's driver, a grandson of the Miccosukee tribal chairman, was battling a felony charge in court.

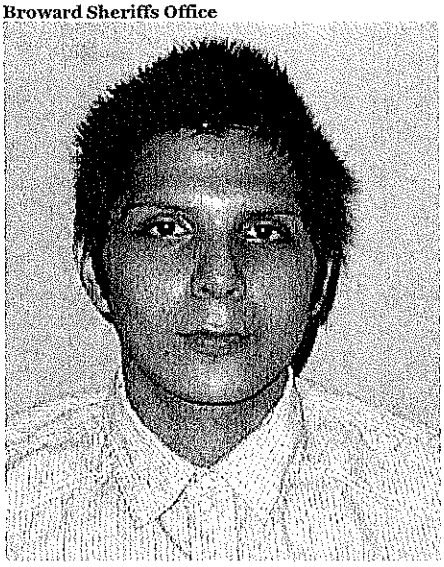
"Why did they lie to us about how many people were in the car?" Will demands as he stands in his comfortable Coconut Grove sunroom. "Why won't they give us any information at all on the other vehicle? Why did it take them 14 hours to contact us? I have no choice but to believe that they're hiding something."

The 500-plus members of the Miccosukee Tribe are descendants of unconquered warriors who, in centuries of fighting, have never retreated from an aggressor.

They came from the Carolinas to Florida in the 1700s as mercenaries recruited by the Spanish to guard against British invasion. In the 1830s, the Miccosukees and Seminoles refused to be herded along the Trail of Tears. They clung to state soil in the bloody seven-year Florida War.

The Miccosukee migrated into untamed Everglades wilderness and weathered another American invasion in 1860. They overmatched their opponent in the swamp. But the tribe was decimated by the fighting and disease. Numbers dwindled to roughly a hundred by the turn of the 20th Century. They established trade relations with the white man along the Miami River, but the Miccosukee always regarded themselves as a renegade nation, making their own rules and strategic allies.

Broward Sheriff's Office



The Furry Family

"I know that they've lied to us," Tatiana's brother Will says of Miccosukee Police.

The Miccosukees have never entered into a treaty with the United States. But from the federal government's perspective, they share the same shaky sovereign status as all other Native American nations — self-rule with numerous caveats. "Dependent sovereignty" allows them no jurisdiction over non-Indians and limited power over their own tribe. Tribal courts can neither hear serious charges like murder nor impose sentences more severe than one year in prison. And Congress can overrule any decision made in Indian court.

Like the Miccosukees, the neighboring Seminole tribe has had its share of sovereignty-related squabbles, especially since building the massive Seminole Hard Rock Hotel & Casino in Hollywood. In 2007, an Air Force airman was arrested by tribal police in a fight at the casino and was denied the right to see evidence against him. When former *Playboy* model and actress Anna Nicole Smith died there of a drug overdose around the same time, Seminole cops led the investigation; Broward authorities' power was limited. And the tribe has long simply ignored personal-injury suits filed by visitors to its casinos.

But perhaps no tribe has had such a contentious recent history involving sovereignty as the Miccosukee, who in the past decade have waged an escalating cold war with the American government.

In 1997, Kirk Douglas Billie, a 29-year-old Miccosukee man who had previously used his status as a member of the tribe to dodge county charges of domestic abuse, drove his ex-girlfriend's SUV into an Everglades canal as the couple's sons, aged 3 and 5, slept in the back seat. He jumped to safety before the car hit water, and the kids drowned. The tribal court absolved him. "The tribe members believe they have handled the issues, Indian to Indian," tribe chairman Billy Cypress explained at the time.

Unfortunately for Billie, the canal was on state property, and the Miami-Dade County State Attorney's Office stuck him with two counts of first-degree murder. Miccosukee lawyers blocked prosecutors from tribal land and threatened to arrest armed agents. The tribe refused to furnish police reports, and Indian cops who cooperated with the state investigation were fired, prosecutors claimed. Still, in 2001, Billie was convicted and sentenced to life in prison.

The Miccosukee court is often accused of meting out lax or unbalanced justice. "It was not remotely like any legitimate justice system I've ever experienced," says Sandy Bohrer, a Miami attorney who once argued a case there involving casino gaming (and sometimes represents *New Times* in press matters). "Frankly, my experience was that the American government's guilt [over its historical mistreatment of Native Americans] had led to a travesty of justice."

"It's not exactly like [the U.S. system], no," counters Miccosukee Tribe representative Guy Lewis, a former U.S. attorney in Florida. "But is it fair? Unequivocally, yes. Is it rigorous? You better believe it. I think the tribal court is probably more concerned with rehabilitation and kind of a family-oriented, holistic resolution than our courts are."

Former tribal police officer Alonzo Moncur says that abiding by the tribe's "lenient" sense of justice "contradicts the oath that you take for the State of Florida." The Miami Gardens native joined the 80-

plus officers of the Miccosukee Police Department — which includes no tribe members — in November 2004 at age 23. He soon learned of the department's "backwards" policies — such as letting drunk-driving suspects cool their heels in a cell until, he says, "they're ready to blow a triple zero," then letting them go.

Another former cop, who requests anonymity, corroborates Moncur's claim. Now employed by another local force, he was a 19-year-old police novice when he enlisted in August 2004. After arresting a tribe member suspected of driving drunk, he says, officers were supposed to call a tribal judge at home. They were invariably given "catch and release" instructions, he says.

Soon after the anonymous policeman joined the force, he says he spotted Chairman Cypress' silver Mercedes swerving recklessly as it sped west on Tamiami Trail. When he flashed his cruiser's lights and pulled him over, the chairman was unapologetic. "He said, 'You know who I am, right?' " claims the former cop. "Then he shut the door and fled."

Cypress led him on a chase, the officer says, before finally pulling over again. "Fuck off" was the chairman's blunt greeting, claims the cop: "He was pretty much trashed."

Cypress, he adds, was never charged in any court for the night's driving crimes.

Attorney Lewis says the cop fabricated the account. "That's pure fantasy," Lewis said of the cop's claims. He says the anonymous officer was fired because of performance issues.

On January 29 of that same year, the chairman was heading west along the trail in his red Lincoln Mark LT pickup truck, according to court documents. Just before 10 p.m., he smashed into a white Ford Econoline van carrying Maria and Rene Aguilar. The Miami couple were on their way home from Fort Myers. According to an insurance analysis later filed in court, Cypress was traveling in the wrong lane.

A blood test pegged the chairman's blood-alcohol content at .141 — well over the .08 legal limit. During Cypress' ensuing DUI case in tribal court, he insisted he had downed no more than two Bud Lights. "I testified to what I saw: that to me, he appeared intoxicated," the anonymous officer says. "There was some talk that the officers involved were going to be fired, but I didn't care."

Cypress was acquitted. Lewis claims the alcohol test was bungled by analysts. "The records were fundamentally wrong," he says. The couple both claimed serious injuries. Their lawyer filed a civil suit, then settled it confidentially.

Cypress didn't respond to interview requests, but his stance on Miccosukee sovereignty is well-known. "This is not the United States," he told *New Times* in a 1995 interview. "People don't understand that, and they never will."

Tatiana Furry was born in 1978 in Anaheim Hills, California. She was the middle sister to two brothers and the daughter of Jack Furry and Helene Hamaty — he a self-made entrepreneur of Lebanese and Irish descent who owned exotic-imported-car dealerships and a commuter airline, she a Jamaican-born nurse.

Tatiana was always something of a tomboy and a soccer player from age 6. She developed a well-built frame as she hit her teenaged years and became the enforcer in cleats. "She was really a force on the soccer field, very physical," says Robin Schmidt, Tatiana's lifelong friend. "She was always the type of girl that just loved being outside, running around, with a smile on her face."

In 1996, just before his daughter's senior year, Jack took a new position in Miami as president of SureCredit USA Home Loans. After a year at Palmetto High School, Tatiana attended Santa Fe College in Gainesville. She quit college after two years and moved back to Miami. She found her passion in

2008 doing side work aboard a University of Miami research boat. Mom predicted Tatiana would've spent her working life at sea.

Even as an adult, she played soccer on an amateur team called Miami Storm in Kendall's Thompson Park. Tatiana was single and maternally attached to her peach-and-white beagle, TJ. "That was her kid," says Lisette Arancibia, who worked with Tatiana at Jack's mortgage business. "She didn't want to go anywhere that she couldn't bring TJ along."

Tatiana turned 31 on January 17, and three days later, she may have made a late-night trip to the casino.

She sometimes played bingo or slots with Arancibia. Or Tatiana worked the poker room, a no-frills, smoke-clogged den where hard-boiled, mostly male players might spend days on end. "I wouldn't have sat there by myself," says Arancibia, "but she was never intimidated by anything."

Will Furry says it's "not shocking" that his sister might've made an impulsive late-night trip to the casino, but why she would've been almost five miles west of it is a "complete mystery," he says.

"I don't know what happened, which makes it really tough to deal with," Arancibia says. "I don't understand the silence."

Arancibia will most likely never make another trip to the casino. She tries to avoid being reminded of Tatiana's absence. "I think of her like she's gone on a trip," she confides. "I let myself believe that she's gone to visit California, or maybe... doing something that made her happy."

In mid-March, nearly two months after Tatiana's death, an editor at the *Miami Herald* received an envelope without a return address, according to an account given to Will Furry by *Herald* reporter David Ovalle. Inside was what appeared to be a Miccosukee police report on the fatal accident, as well as six computer-printed photographs taken at the scene. Also included was a letter slamming the tribe's police department, apparently written by a disgruntled officer. Even though they weren't officially verified, the *Herald* published the report and the photos. The letter was withheld.

If genuine, the documents cast some light on the other people involved in the accident, all of them young Miccosukee men: 18-year-olds Clifton Huggins III and Travis Osceola; Jared Tiger, 23; and Billy Cypress' grandson, Kent Billie, 20.

The reports also contradict Miccosukee officer Russell Barnes' assertion to the Furrys that there were two people in the other car. Indeed, Miccosukee attorney Lewis confirms that the four men were "involved" in the accident.

Tribal Officer Abner Rodriguez arrived at the scene at 4:12 a.m., according to the report, and was immediately approached by Huggins and Osceola. "We were traveling east to go fuel up at Dade Corners," Osceola told the officer, referring to a gas station located cater-cornered from the Miccosukee casino at Krome Avenue. "And we saw this pickup truck heading straight at us." (Rodriguez didn't return a call seeking comment.)

Rodriguez noted a "strong odor of an alcoholic beverage emitting from Clifton Huggins' breath."

The cop made his way to the overturned Expedition, where he found two people still inside. The apparent driver, Billie, was splayed in the center of the truck, "unresponsive" but alive. Tiger was crawling through a blown-out rear window. Rodriguez helped him out as two more tribal cops arrived.

Turning to the Nissan, Rodriguez found Tatiana Furry in the "rear passenger side seated in a crouched position." There were no vital signs. When a Miami-Dade squad car arrived, Huggins was apparently

perturbed. He remarked, "Ah man, they're not going to handle this and fuck with us are they?" according to the report.

As Huggins was treated by paramedics for a "minor laceration to his left arm," two Miami-Dade Fire Rescue choppers arrived and airlifted Billie and Tiger.

The *Herald* took the leak one controversial step further, submitting the materials to local accident-analysis expert William J. Fogarty, who determined that "Furry's Nissan Frontier crossed over the median and into the Ford," causing the wreck. But one of Fogarty's colleagues, Miles Moss, notes that far more rigorous testimony would be required in court. He calls the conclusion "speculation."

Attorney Lewis says the theory that Furry was at fault is "in line with my own findings." He claims to have "hard, concrete evidence" that Furry had spent the night drinking heavily at the casino and had become "unruly... She was out at the hotel for several hours, gambling and drinking throughout. Unfortunately, she had been asked to leave, but she got in her car despite the fact that security tried to call her a taxi."

Lewis does not elaborate on the source of his findings. As per county policy, Tatiana's blood was drawn at the Miami-Dade medical examiner's office, but those results have not been made public.

The lawyer attempts to win sympathy for his clients. "They're four young boys, two of whom have suffered serious injuries, one of which was life-threatening," Lewis laments. "These are kids who were out playing computer games and videogames before this accident occurred."

On the morning of Monday, April 6, an orderly in blue scrubs rolls a wheelchair-bound Kent Billie into the Broward County Courthouse just south of downtown Fort Lauderdale. Billie's crumpled outfit consists of a blue-striped, buttoned-down shirt tucked into pajama pants and puffy socks under rubber sandals. His left pants leg is rolled up to accommodate a heavy brace screwed into his gauzed shin. His hair sticks up wildly, and the goatee he sported in an old mug shot has been shaven. He's accompanied by two older female relatives wearing bright dresses. Even with tattoos peeking out from the edges of his clothing, the 145-pound, five-foot-five, 20-year-old looks like a sickly pediatric patient.

His attorney, Kathryn Meyers, steps in like a blocking linebacker to shield her client from questions. "Would you just allow him to speak to his lawyer?" she demands.

All four young men involved in the accident with Tatiana Furry have been charged with crimes while driving, none of them related to the January 21 incident.

Near 9 p.m. Saturday, November 8, 2008, just over two months before the fatal accident, Billie was driving 71 mph in a 50-mph zone on Route 27, according to a police report. Travis Osceola was in the passenger seat. When Pembroke Pines police officer Scott Kushi pulled over the gray, 2008 Ford SUV, he smelled marijuana, and Billie handed over a five-gram bag of "suspect cannabis," according to the report. Kushi also turned up "one gram of suspect cocaine" in Billie's right pants pocket. "Billie advised," continues the report, "that he had purchased the cannabis for $100 and the cocaine for $50." The cop also discovered an open bottle of Jack Daniels in the vehicle. And Osceola was arrested too, for "5 grams of suspect cannabis," Officer Kushi found on him.

According to a plea deal reached in April, Billie's charges will be dropped if he completes a two-year program including abstinence from alcohol and drugs. Osceola's pot-possession charge will be similarly forgiven.

Then there's Clifton Huggins, who in October 2007 was clocked by a Broward Sheriff's Office deputy in Lauderdale-by-the-Sea zooming through a 40-mph zone at 70 in his silver 2006 Jeep SUV without a driver's license, according to police documents. He was then 16 years old. Less than a month later,

his driving privileges were suspended for six months after he was pulled over in Hillsborough County on a charge of driving recklessly with a blood-alcohol content over the limit, according to court records. In May 2008, a judge revoked his license indefinitely after he failed to appear in Miami-Dade court for allegedly making an improper U-turn and "knowingly" driving without a license.

In June 2008, Jared Tiger, driving a black 2008 Ford Explorer, was pulled over by a Miami-Dade officer who claimed Tiger was driving 61 mph in a 45-mph zone as he traveled east on Tamiami Trail a few miles past the casino. The cop detected a "strong smell of marijuana" and saw a joint on the console, according to a police report. When ordered to step out of the SUV, Tiger "became aggressive... clos[ing] his first" and yelling " 'What? What you say?' " He was cuffed and charged with possession of cannabis and resisting an officer, but the charges were dropped after Tiger completed a pretrial intervention program in February of this year.

Efforts to contact the young men on their cell phones, via visits to their homes, or through online correspondence have proven fruitless. They live just outside Miccosukee Village in the rural town of Ochopee, where the tribe members' houses are often gaudy affairs, expansive and columned. High-priced toys like new SUVs and sports cars, airboats, and golf carts for inter-reservation travel litter the lawns. Shared casino revenue from the Miccosukee Resort has made the citizenry rich: The $75 million-plus it brings in annually is split among tribe members.

When a *New Times* reporter knocked on the front door of Jared Tiger's slate-gray home, the lanky goateed young man, who stands five-foot-five and weighs 130 pounds, answered. Tattoos on his neck bear his initials and the word *Shotgun* in delicate script. He winced against the sunlight. "Yeah, I don't want to discuss anything," he said.

Asked if he was injured in the accident, Tiger answered "No, not much" before he shut the door.

About 7 p.m. on the chilly, clear night of February 18, Thomas Cypress, Chairman Billy Cypress' 54-year-old brother, was driving west along Tamiami Trail when his silver 2000 Toyota Tundra slammed into a red Chevrolet coupe traveling the other way. The driver and passenger of the Chevy, Robert and Paulette Kirkpatrick, retired husband-and-wife schoolteachers from Maryland on their way home from an arts festival in Naples, were both dead before ambulances arrived. The accident was less than a month after Furry's, its location less than a mile west.

Cypress was in the wrong lane as he tried to pass another car, according to a police report. He had a case of Budweiser beside him, and his blood-alcohol content was .249, cops say, more than three times the legal limit. He had been convicted of three previous DUIs and was driving with a suspended license.

After the accident, Will Furry was uncharacteristically irate. "They're killing people; they're killing people," he declared incredulously. "In one month, they've killed three people!"

Law enforcement's handling of the Thomas Cypress accident, however, was markedly different from Tatiana Furry's. The Florida Highway Patrol was first on the scene and never relinquished control. "We've had discussions with the tribe," says FHP spokesman Lt. Pat Santangelo, "and the directive that we have... instructs us to handle any type of a traffic fatality that happens on that stretch of road."

Cypress was charged with two counts of DUI manslaughter by Miami-Dade prosecutors. On March 24, a judge rejected his request to be released to an alcohol-abuse center "sensitive" to Native Americans, and he remains in jail. His trial will begin in late June.

In Furry's case, the Miccosukees have not cooperated with state prosecutors, who as of early April had interviewed the tribal policemen involved but hadn't received requested reports. An investigation into "the circumstances of the Furry accident and death" is "ongoing," says Miami-Dade State Attorney's Office spokesman Ed Griffith. "The SAO simply seeks to obtain the reports and evidence that every

other police force in Dade supplies to the prosecutor's office... Since this was not a tribal incident occurring on tribal land, we do not believe that tribal sovereignty issues apply."

Will Furry knows little more now than he did a week after the accident. His lawyers have warned him that it may be years before the State's Attorney's Office reveals any findings.

He sat near his pool with his wife, Jamie, and a hyperactive Chihuahua puppy named Spartacus, a new entry to the family. The couple had recently returned from a weeklong vacation with family friends in San Francisco: "I had to take a break from all of this," says Will.

After acting as spokesman for the family, Will has started to relax a little. He can finally grieve for his sister. Today, he brings up her funeral at sea. The ashes were scattered from the Furrys' yacht off Key Biscayne, one of her favorite spots to dock. As they left port in Coconut Grove, "every boat around us started blasting their horns," recalls Will, his cheeks suddenly damp with tears at the simple memory. "She's going to be so missed on those docks."

Tatiana's parents have also retreated from Miami, heading in early April to Jamaica. Helene has started reading the Bible more often, and she tries to stay busy with household chores. "It doesn't make any difference, though," she says over the phone. "It goes with you everywhere you go. There's no closure. It's a mother's worst nightmare."

Helene prays for Kent Billie every night, "that he will get better and that he will find God," she says. She's unconcerned with who was at fault: "I want the truth. I hope for truth and justice, one way or another."

R-1232-78
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AGREEMENT

This Agreement entered into this 5th day of December, 1978 between Metropolitan Dade County, Florida (hereinafter referred to as "County") and the Miccosukee Tribe of Indians of Florida (hereinafter referred to as "Tribe");

WITNESSETH THAT

WHEREAS the Tribe is desirous of providing tribal police services for the inhabitants of its dependent settlements and its commercial enterprises, some of which are located near, but outside of the boundaries of, the area reserved for the occupancy of the Tribe by Special Use Permit issued by the Secretary of the Interior (the "Tribal Use Area") which is depicted in Exhibit "A" hereto and outlined in green;

WHEREAS the Tribe is authorized to exercise governmental jurisdiction within the Tribal Use Area and has established a Miccosukee Public Safety Department to provide police services within the Tribal Use Area;

WHEREAS the County is currently providing police services to the Tribe's dependent settlements and enterprises outside of the Tribal Use Area by and through its Public Safety Department on an infrequent basis and,

WHEREAS the County recognizes that concurrent jurisdiction for the County and for the Tribe in the dependent settlements located outside the Tribal Use Area would be advantageous to both parties by reason of the proximity of the Miccosukee Public Safety Department to the said settlements and commercial enterprises and its special expertise in and sensitivity to Miccosukee tribal law and custom;

NOW, THEREFORE, the County and the Tribe, the parties aforesaid, do hereby covenant and agree that the Tribe, by and through the Miccosukee Public Safety Department, is hereby authorized to exercise concurrent police jurisdiction with the County to enforce State and county law within the area described below:

> Beginning at the western boundary of the Everglades National Park at the west line of section 20, Township 54 South, Range 35 East, thence east following the northern boundary of said park in Township 54 South, Ranges 35 and 36 east to a point in section 19, Township 54 South, Range 36 East, on the west right-of-way line of an existing road known as Seven Mile Road, thence due north to the north right-of-way line of District Levee 29, thence west along the north right-of-way line of District Levee 29 to a point in section 16, Township 54 South, Range 35 East, on said right-of-way line due north of the point at which the north right-of-way line of State Road 94, also known as Loop Road, intersects the south right-of-way line of U.S. Highway 41, thence due south to the point at which such right-of-way lines intersect, thence southerly along the north right-of-way line of State Road 94 to a point at the west line of section 20, Township 54 South, Range 35 East, due north of the point of beginning, thence south along the west line of said section 20 to the point of beginning together with the tract of approximately four acres surrounding the Miccosukee General Council house located immediately north of District Levee 29 and clearly marked on the ground,

which is depicted as the area shaded in blue on Exhibit A and hereinafter called the "Area of Concurrent Jurisdiction," subject to the following conditions:

1. This Agreement shall not in any way be construed as a delegation of the County's police powers to the Tribe in the Area of Concurrent Jurisdiction.

2. The County shall at all times retain its primary jurisdiction within the Area of Concurrent Jurisdiction through its Public Safety Department and the officers of the Miccosukee Public Safety Department