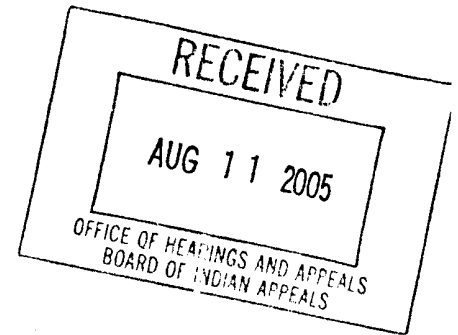


James E. Marino
Attorney at Law
1026 Camino del Rio
Santa Barbara, CA 93110
Tel/Fax (805) 967-5141



BEFORE THE
INTERIOR BOARD OF INDIAN APPEALS

SANTA YNEZ CONCERNED CITIZENS,
PRESERVATION OF LOS OLIVOS,
PRESERVATION OF SANTA YNEZ, AND
WOMEN'S ENVIRONMENTAL WATCH
OF THE SANTA YNEZ VALLEY,

Appellants,

v.

PACIFIC REGIONAL DIRECTOR,
BUREAU OF INDIAN AFFAIRS,

Appellee

RESPONSE TO MOTION TO
DISMISS AND ORDER OF
JULY 11, 2005

Docket No. IBIA 05-50-A

Preservation of Los Olivos (POLO) and Preservation of Santa Ynez (POSY) file this Response to the Regional Solicitor's Motion to Dismiss and the Interior Board of Indian Appeals (IBIA) Order of July 11, 2005 denying the Motion for an Extension of Time and requiring a brief in response to the Motion to Dismiss be filed by August 11, 2005. The Statement of Reasons filed February 22, 2005 is incorporated herein by reference.

The Regional Solicitor of the Department of Interior challenges the standing of the appellants in the Motion to Dismiss. Appellants agree that standing is defined in 25 C.F.R. § 2.3.

This requires that Appellants demonstrate that they are interested parties that have an interest that could be adversely affected by the decision. The Regional Solicitor cites *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992) as the appropriate standard to apply. Appellants do not agree or disagree that the three part *Lujan* test for standing in the federal courts is the appropriate standard to apply to an IBIA appeal. For the purpose of addressing this Motion to Dismiss, the Appellants address the standing requirements of *Lujan, supra*.

THE MEMBERS OF POLO/POSY ALL HAVE STANDING

The three part test of *Lujan* requires (1) injury in fact; (2) a causal connection between the conduct complained of and the injury and; (3) it must be likely that the injury will be redressed by a favorable decision. All three of these standing requirements have been affected significantly by the recent decision of *City of Sherrill v. Oneida Indian Nation*, 125 S.Ct 1478 (March 29, 2005). This recent decision concerns the interests of local landowners to address additional Indian land claims in federal court. Appellants POLO/POSY specifically state that they have justifiable expectations in the continued use and quiet enjoyment of their property and for state jurisdiction to continue to apply on these parcels requested to be placed into trust status. *Sherrill* at 1490-1. The *Sherrill* decision recognizes that 25 U.S.C. § 465 is the method Congress has provided “for the acquisition of lands for tribal communities that takes account of the interests of others with stakes in the area’s governance and well being.” *Id.* at 1493. As made clear by the *Sherrill* Court, all requests for lands to be placed into trust are additional land claims of Indian tribes that must go through the 25 U.S.C. § 465 process. The reasoning of the majority in *Sherrill* applies directly to 25 C.F.R. § 151.10 (2004), requiring the Department of the Interior

to now specifically take into account all of the factors protecting the justifiable expectations and rebalanced equities in favor of retaining state jurisdiction cited in *Sherrill* before taking lands into trust status for an Indian tribe. *Sherrill* at 1493-4.

Unlike New York, California has large unincorporated areas subject to the primary control of County governments. The Santa Ynez Valley is mostly unincorporated and subject to the County of Santa Barbara. Santa Barbara County has standing because of the potential loss of property tax revenue. The standing of POLO/POSY is separate from the standing of Santa Barbara County to intervene and participate in this appeal of the Area Director's decision. Because the County of Santa Barbara encompasses such a large area of which the Santa Ynez Valley is only a small part, the property owners organized and incorporated POLO and POSY to protect their local interests. The Preservation of Los Olivos (POLO) and Preservation of Santa Ynez (POSY) are non-profit corporation 501(c)(4) citizens' groups formed to protect the rural character, water quality and air quality of the Santa Ynez Valley. The membership of both groups totals about 150 people who reside, own property, recreate and work within 6 miles of the Chumash casino and the parcels requested to be placed into trust status. See attached Declarations of members of POLO/POSY and neighboring residents and business owners. Therefore, if one or more of their members have standing under the *Lujan* test then the organizations themselves have standing. *Lujan* at 556.

Because of the close proximity between their individual properties to the area requested to be placed into trust, if the 6.9 acres of land are placed into trust the impact to their private property values and use and quiet enjoyment of their properties will cause injury in fact. Creating a checkerboard or piecemeal jurisdiction of alternating state and tribal jurisdiction is injury in

fact. *Sherrill* at 1493. It appears also that the Tribe is purposely applying for fee to trust acquisitions in incremental applications thus “piecemealing” the review process and disguising the cumulative impacts. Cumulative impacts are required to be considered for any effective environmental assessments including those required by the Secretary under 25 C.F.R. § 151.10 and § 151.11. Also see 40 C.F.R. § 1508.8, *Natural Resources Defense Council v. Grant*, 341 F. Supp. 356 (E.D. N.C. 1972), *Sierra Club v. Morton*, 514 F.2d 856 (D.C. Cir. 1975).

In addition, the value and enjoyment of the property of the members is based on the rural character of the area. The President of POLO is a veterinarian specializing in large animals. His practice relies on the rural ranching character of the area. These additional land parcels are requested to increase the size of the reservation not for housing but for large scale commercial development not in the character of the area. Appellants point out that the finding of the Area Director specifically states that trust status is requested because the tribe has demonstrated a need to manage and develop the property pursuant to its own laws, interests and goals. If the lands remain in fee status, tribal decisions concerning the use of the land would be subject to the overriding authority of the State of California and the County of Santa Barbara. The newly developed parcels would also be subject to property taxes and sales taxes to offset the additional costs the County will incur providing protective services and infrastructure. The loss in property tax revenue and sales tax revenue is injury in fact to these private property owners who will have their taxes affected by the lost revenue. In addition, the lack of State and local taxes and other costs of doing business unfairly permits tribal owned businesses to compete with other non-Indian businesses in the area. In light of the *Sherrill* determination, this decision to place these parcels into trust to remove them from state jurisdiction allowing the Tribe to alter the character

of the area, avoid state and county regulation and unfairly compete with other businesses, is in itself injury in fact. This is especially true because none of the *Sherrill* factors are considered in the Area Director's decision. This decision is now arbitrary and capricious as a matter of law.

In addition, the members of POLO/POSY have drinking water and irrigation wells on their properties hydrologically connected to the Rio Santa Ynez and Zanja de Cota Creek. See Environmental Evaluation at 3-2 through 3.3. The only local reservoir in the area is located on the Gainey Ranch which surrounds the current claimed reservation on its entire southern boundary. The Santa Ynez aquifer supplies the area with drinking water. According to the Environmental Evaluation, Appendix D, the aquifer runs from the Santa Ynez River on the south to the Santa Rafael Mountains to the north. The area presently claimed as the Chumash "reservation" was part of the La Cañada de los Pinos land grant secularized from Mission Santa Ynez conferred as private property under the Court of Private Land Claims. The Chumash are claiming that there are three available water alternatives. The second and third alternatives are to provide water from their own wells located right in the path of the gasoline contamination. Environmental Evaluation at p. 3-6. The Environmental Evaluation asserts that the Tribe has sufficient Winters' Rights to pump the necessary groundwater to fulfill these alternatives. POLO/POSY disagree that the Tribe possesses reserved water rights and point out the serious injury to the local aquifer if this groundwater pumping occurred. The reservation itself occupies part of the creek bed of Zanja de Cota Creek and is directly in the drainage to the Rio Santa Ynez.

Immediately adjoining the parcels to be placed into trust pursuant to 25 U.S.C. § 465 is the site of an operating gasoline station. According to tribal records and records of the California

Regional Water Quality Board (CRWQB) the land underlying this gasoline station is heavily contaminated by gasoline. The full extent of the gasoline plume is not yet known. A gasoline spill in groundwater poses a particularly serious threat because of the gasoline additive methyl tertiary butyl ether (MTBE). A very small amount of MTBE can contaminate thousands of acre feet of underground water and surface water. A recent report of the CRWQB indicates MTBE concentrations from 110,000 ppm to 150,000 ppm. This represents MTBE levels ten thousand times the level deemed safe in drinking water under CRWQB standards. Private individuals and private groups have standing to challenge point source water pollution. See *Proffitt v. Municipal Authority of Morrisville*, 716 F. Supp. 837 (E.D. Pa. 1989), See also *P.F.Z. Properties, Inc. v. Train*, 393 F.Supp. 1370 (D.C. Colo. 1975).

The only environmental clearance required by the Bureau of Indian Affairs (BIA) for this fee to trust application was completion of an Environmental Assessment. The Environmental Assessment required no groundwater sampling or test wells on these parcels that immediately adjoin the gasoline station and its significant gasoline plume that is known to have penetrated at least 50 feet below the water table. The finding that there is no serious contamination on any of the parcels in the Area Director's decision based on the scant environmental evaluation of the Environmental Assessment is clearly arbitrary and capricious. See Exhibit "A". The attached records indicate that the gasoline plume is spreading beyond the gasoline station site in a southwesterly direction following the natural contours of the area. The test wells place the gasoline plume within a few feet of the easternmost parcel requested to be placed into trust status. See Exhibit "B." The Environmental Assessment attached to the application for trust status not only does not address the gasoline plume or great risk to the local aquifer posed by the

MTBE present in the plume but, no test wells were drilled or groundwater sampled at all even though potential contamination was identified by the Environmental Site Assessment done in 2000. See Appendix D p. 2-3,7-8 and 15-6 of the Environmental Assessment on file herein. Off site acquisition of any property that is contaminated or presents environmental hazards must be considered in detail. 25 C.F.R. § 151.10(h) made applicable to off site acquisitions by 25 C.F.R. § 151.11(a). This Environmental Assessment does not satisfy NEPA requirements for a finding of no significant impact in 2004 when the assessment did nothing to update the information regarding the noted gasoline spill. 40 C.F.R. § 1508.9 and 40 C.F.R. § 1508.13. The FONSI finding in this case is arbitrary and capricious.

Placing privately acquired tribal lands into trust status is a major federal action under the National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 et. seq. This is especially true when the Tribe knew of the contamination at the gasoline station and did not inform the BIA of the significant risk to the local community or the tribal members living directly within the projected groundwater flow direction of the gasoline plume. Under these circumstances a full Environmental Impact Statement is required under NEPA to protect the interests of the Tribe and particularly tribal members residing in the path of the expanding contamination as well as to protect the local area and non-Indian residents from a very serious and irreparable pollution of their drinking water by subterranean gasoline. 42 U.S.C. § 4332(c). This plume also poses a very serious risk to the tribal well located on Zanja de Cota Creek immediately below the gasoline spill. As set out above, pursuant to 25 C.F.R. § 151.10 lands that are not marketable or are contaminated are not suitable for being taken into trust status. The Area Director's decision clearly states that the Santa Ynez Tribe has their own environment department that may or may

not decide to address the serious gasoline and MTBE contamination if these lands are placed into trust status. The fact that such a major gasoline spill with MTBE is located within 100 yards of the Chumash casino and approximately 50 feet from two creeks that drain into Zanja de Cota Creek is potentially a major health threat to the entire local area. This fee to trust application should be denied pending the completion of an EIS to determine the significant impacts on the local area of the gasoline and MTBE plume and the extent of its continuing underground expansion. Appropriate corrective actions and a remedial plan must be prepared to address the contamination to protect the water resources of the entire area. Also, there was no determination by the Regional Director that the BIA is equipped to discharge the additional responsibilities of acquiring such a contaminated parcel of land as required by 25 C.F.R. § 151.10(g) made applicable to off reservation acquisitions by § 151.11(a). Allowing the gasoline spill and MTBE contamination to remain untreated and outside of state and local control by placing the lands into trust status is very serious injury in fact. The concerns of the County government are evidenced by the attached Exhibit "C."

Both the Clean Water Act, 33 U.S.C. § 1251 et. seq., and Resource Conservation Recovery Act, 42 U.S.C. § 6901 et. seq., apply to this very serious gasoline spill located in between the 6.9 acres and 5.7 acres requested to be placed into trust status. Under both federal acts the State of California has primary regulatory jurisdiction over this gasoline leak from underground storage tanks. 42 U.S.C. § 6991(b)(7). In fact, MTBE does not yet have minimal federal standards set under either act. Also, MTBE has a very high transportability rate, allowing it to spread rapidly through an aquifer to reach well beyond the migratory range of other contaminants contained in a gasoline spill. Therefore, removing these parcels of land from state

jurisdiction poses a significant health risk to the entire area and could cause wide spread groundwater contamination affecting a major part of the Rio Santa Ynez and Santa Ynez aquifer. Private individuals through citizens suit provisions have standing to raise violations of the Clean Water Act and the Resource Conservation Recovery Act. See 33 U.S.C. § 1365 and 42 U.S.C. § 6972. Quite obviously if private individuals have standing to legally raise these issues they have standing to raise the issue of the regional Director's failure to address them adequately, as required by 25 C.F.R. § 151.10 and § 151.11, when considering the acquisition of contaminated off reservation lands and removing them from the jurisdiction of State and local agencies with the primary responsibility for investigating and remediating the pollution.¹

Lastly, all of the property owned by the members of POLO/POSY is located on former Santa Ines Mission lands secularized from the Mission by Mexico after 1834. All of the member's properties are located within lands recognized as private property through land grant proceedings of the Court of Private Land Claims. Somehow, the BIA is characterizing that these lands requested to be placed into trust status under 25 U.S.C. § 465 as being "annexed" to the Santa Ynez reservation. The Santa Ynez Band of Mission Indians is not and never was classified as a civilized tribe under Articles VIII and IX of the Treaty of Guadalupe Hidalgo. Only the Pueblo Indians of New Mexico and the Hopi, Gila and Tohono O'odham Tribes of Arizona have ever been classified as being civilized and having municipal rights under territorial law. The Mission Indian Relief Act, 26 Stat. 712, secured additional private property for the Mission Indians but did not by its express terms convert these private land rights into property owned by

¹ The State and local agencies have open and active case files LUFT Site No. 50073 for the gasoline spill site. A transfer to trust status would deprive them of their current authority and jurisdiction to remediate the spill if it has spread below the subject parcels. Exhibit "B" hereto.

the United States in trust for the Santa Ynez Band. To even attempt to reclassify the rights of the Santa Ynez Mission Indian Band is an overt threat to all private property owners that live on lands that all originally were Santa Ines Mission Land grants secularized by Mexico after 1834. The threat that this fee to trust process can be treated as an “annexation” is an injury in fact.

These appellants would be injured in fact if the Area Director’s decision is upheld, satisfying the first requirement of standing. As said by the *Lujan* Court “When the suit is one challenging the legality of government action or inaction, the nature and extent of facts that must be averred or proved in order to establish standing depend considerably upon whether the plaintiff himself is an object of the action at issue. If he is, there is ordinarily little question that the action or inaction has caused him injury, and that a judgment preventing or requiring the action will address it.” *Lujan* at 561-2. It is in regards to this statement that *Sherrill* causes the largest change in standing for non-Indian persons subjected to an Indian land claim. Placing additional lands into trust status for an Indian tribe is no longer merely a regulatory exercise by the Department of the Interior for an independent tribal sovereign not considered to affect the people in the surrounding area. These additional land claims are to be treated as competing private interests between the Indian tribe and surrounding community. *See Sherrill* at 1491-4. *See also Cayuga Indian Nation v. Pataki*, --F.3d--WL 1514245 (2nd Cir. June 28, 2005). Therefore, under the *Lujan* test it is presumed that POLO/POSY have standing to challenge the action of the Area Director that these parcels of land are eligible or should be placed into trust status.

All of the alleged injuries above are causally connected to the fee to trust application being approved by the Area Director. But for the approval of the application to place the lands

into trust, the members of POLO/POSY would not be injured. A reversal of the decision of the Area Director would be a favorable decision removing the injuries. All of the members of POLO/POSY meet the standing requirements of *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992).

For the above reasons, the Appellants POLO and POSY respectfully request the IBIA deny the Motion to Dismiss made by the Regional Solicitor and allow this appeal to proceed on the merits of issues to be determined. The Appellants also request that the Hearing Officer assigned to this appeal take special consideration of the impact of the *Sherrill* decision and the attached information of the gasoline spill that is heading straight for the Chumash reservation. The Area Director's decision should be withdrawn and this process started anew using current law and information regarding the serious contamination risk to the area. Having to prosecute this appeal in light of these changed circumstances is injury in fact and a waste of local and federal resources that would be much better spent mapping and remediating this very serious contamination.

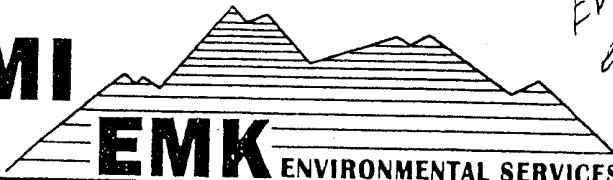
Respectfully submitted,



James E. Marino
Attorney for POLO and POSY

EXHIBIT A

DMI



EMK ENVIRONMENTAL SERVICES, Inc.

EDF
enf

Corporate Office
410 East Arrellaga Street, Santa Barbara, CA 93101
Phone (805) 568-0074; FAX (805) 965-3374
Ventura Office
1056 East Meta Street, Suite 201, Ventura, CA 93001
Phone (805) 653-0633; FAX (805) 653-0266

File

June 2, 2005

Mr. Steve Nailor
County of Santa Barbara
Protection Services Division
195 West Highway 246, Suite 102
Buellton CA 93427

RECEIVED
JUN 07 2005

BY: R


Subject: Volks 76 Service Station
3545 East Highway 246, Santa Ynez, California
LUFT Site #50073, SWRCB Global ID# T0608300512
QUARTERLY MONITORING REPORT
(Quarter Ending June 30, 2005)

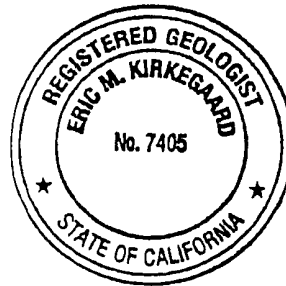
Dear Mr. Nailor:

DMI-EMK Environmental Services, Inc. (DMI-EMK) prepared this *Quarterly Monitoring Report* on behalf of Mr. John Volk, owner of the subject property (site). Quarterly monitoring services were provided in compliance with the County of Santa Barbara Protection Services Division - Leaking Underground Fuel Tank Program requirements. DMI-EMK conducted this quarterly monitoring event on April 20 and 21, 2005. The following report discusses the work performed and findings.

We trust this report meets your current requirements. If you have questions or comments regarding this report, please contact us at (805) 568-0074.

Respectfully submitted,
DMI-EMK Environmental Services, Inc.


Eric M. Kirkegaard, RG #7405
Senior Geologist



cc: Mr. John Volk

QUARTERLY MONITORING REPORT (QUARTER ENDING JUNE 30, 2005)

VOLKS'S 76 SERVICE STATION
3545 EAST HIGHWAY 246
SANTA YNEZ, CALIFORNIA
LUFT SITE # 50073, SWRCB Global ID# T0608300512

1.0 INTRODUCTION

DMI-EMK Environmental Services, Inc. (DMI-EMK) prepared this *Quarterly Monitoring Report* on behalf of Mr. John Volk, owner of the subject property (site). Quarterly monitoring services were provided in compliance with the County of Santa Barbara Protection Services Division – Leaking Underground Fuel Tank Program (LUFT) requirements. DMI-EMK conducted this quarterly monitoring event on April 20 and 21, 2005. This report discusses the work performed and findings.

1.1 Project Description

The site is located at 3545 East Highway 246, Santa Ynez, California (Figure 1). The site is located in an area of mixed commercial and residential use, within the town of Santa Ynez. The property consists of a rectangular parcel situated on the northwest corner of the intersection of Highway 246 and Edison Street. The northern half of the property is generally vacant. The southern half of the property contains a single story building used as a gasoline service station/convenience store and three fuel islands. The areas around the building and pump islands are generally paved with concrete and asphalt. Currently there are two underground storage tanks (USTs) located on the west side of the site building. Prior to their removal, three 6,000-gallon gasoline USTs, one 2,000-gallon gasoline UST, fuel dispensers and associated product plumbing lines were located on the southern side of the building. Their former locations are shown on Figure 2.

1.2 Background

On August 6, 1999, B&T Service Station Contractors removed the UST's and fuel dispensers from the site under witness by a Santa Barbara County – Protection Services Division (PSD) representative. DMI-EMK was on site and collected soil samples from below the former UST's, fuel dispensers and from the two soil stockpiles. Indications of petroleum contamination (odors and staining) were observed in soil remaining beneath the former UST locations. In addition, perforations were observed on the bottom and sides of Tank #4.

Based on the information generated during the removal and abandonment activities, it appeared that a release of gasoline constituents has occurred in the area of the former USTs and dispenser locations. Concentrations of total petroleum hydrocarbons as gasoline (TPH-G), as diesel (TPH-D), benzene, toluene, ethylbenzene, total xylenes (BTEX), and methyl-tertiary-butyl ether (MTBE) exceeding LUFT Recommended Cleanup Levels (RCLs) were identified in the soil

beneath the former USTs and one of the former dispenser islands. The findings were presented in the *Tank Removal Report*, dated January 27, 2000.

Based on the findings, LUFT verbally required further assessment of the lateral and vertical distribution of contaminants in soil and groundwater under the site (this was later documented in a letter dated December 15, 1999). In response, DMI-EMK prepared and submitted a *Workplan for Subsurface Assessment* dated February 1, 2000. The workplan presented a scope of services including installation of eight borings at the site and completion of six of the borings as groundwater monitoring wells.

The workplan was approved by LUFT in a letter dated February 24, 2000. However, due to financial considerations, John Volk was unable to conduct the full scope of services. As a result, a fax dated August 14, 2001 was issued to LUFT requesting that Mr. Volk be allowed to: 1) complete half the proposed scope (four borings, three completed as wells) at that time; and, 2) delay completion of the remaining proposed services until he received a response to his application to the State Underground Storage Tank Cleanup Fund. LUFT verbally approved this request in August of 2001.

On August 28 and 29, 2001, drilling and sampling of one boring (B1) and three groundwater monitoring wells (MW1-MW3) was conducted at the site. Based on the findings, it appeared that there had been a significant release of gasoline to the subsurface soils and groundwater. Petroleum staining and odors were observed to the maximum depths explored of 70 feet below ground surface (LUFT requested no deeper drilling at this time). Groundwater sample analytical results generally indicated that the highest contaminant concentrations were found in the area of well MW2. However, the lateral and vertical distribution of the contamination has not been assessed.

During January and March 2004, DMI-EMK completed assessment activities required at the site by LUFT. The work performed during this phase of work included the drilling, sampling, and installation of two deep-screened groundwater monitoring wells (MW2B and MW3B) and eight shallow-screened groundwater monitoring wells (MW4 through MW11). Based on the results of this assessment, it appears that the adsorbed-phase soil contaminant plume (TPH-G, benzene, and MTBE) is limited to the area directly adjacent to, and below the former USTs and dispensers. Although the laboratory analytical data indicates that the adsorbed-phase TBA soil contaminant plume extends to the area of well MW7, located west of the former USTs, this soil contamination only occurs below the groundwater table and therefore appears to be associated with the migration of the dissolved-phase contaminant plume. Based on the results of this assessment, it appears that the further assessment of the dissolved-phase groundwater plume is warranted to the north, west, and southwest of the former USTs. The results of this phase of investigation were presented in DMI-EMK's *Additional Soil and Groundwater Assessment Report* dated February 7, 2005.

2.0 WORK PERFORMED

On April 20, 2005, DMI-EMK conducted monitoring and sampling of the 13 site wells (MW1, MW2, MW2B, MW3, MW3B, MW4, MW5, MW6, MW7, MW8, MW9, MW10, and MW11). The depth to groundwater (static groundwater level) was measured in each of the wells using an electronic water level meter. The wells were then purged using a submersible electric pump. The wells were purged of a minimum of three well casing volumes or until dry. Meter readings obtained during the well purging process indicated that the temperature, pH and conductivity of the well water had stabilized. The water generated during purging of the wells was placed in 55-gallon, DOT-approved drums and left on site pending a review of laboratory analytical results. The submersible pump was cleaned prior to purging using an Alconox® detergent solution followed by a rinse with tap water.

The wells were then allowed to recover to at least 80 percent of the static groundwater condition. On April 21, 2005, groundwater samples were collected from the wells, using disposable polyethylene bailers, and transferred to 40-milliliter VOA bottles. The bottles were prepared and supplied by the analytical laboratory. A duplicate groundwater sample was collected from well MW7. The sample bottles were labeled and stored in the field in an ice chest cooled with ice. The ice chest also contained a laboratory supplied trip blank consisting of organic-free, de-ionized water. The samples were delivered to the laboratory under Chain-of-Custody protocols.

The groundwater samples collected from the wells were submitted to Columbia Analytical Services, of Canoga Park, California for analysis of:

- TPH-G and TPH-D using EPA Method 8015M; and,
- BTEX; 1, 2-dichloroethane (EDC); 1, 2-dibromoethane (EDB); MTBE; tertiary-butyl alcohol (TBA); tertiary-amyl-methyl ether (TAME); Di-isopropyl ether (DIPE); and, ethyl-tertiary-butyl ether (ETBE) using EPA Method 8260B.

The duplicate sample and trip blank were analyzed for BTEX, EDC, EDB, MTBE, TBA, TAME, DIPE, and ETBE using EPA Test Method 8260B.

3.0 FINDINGS

Well construction, hydrologic, and global positioning system (GPS) data obtained for the wells are presented in Table 1. Historical groundwater elevations and flow data are presented in Table 2. Laboratory analytical results for the groundwater samples collected from the monitoring wells for this event are summarized in Table 3. Historical laboratory analytical results for each of the site wells are presented along with the measured groundwater elevations in Table 4. The groundwater elevation contours for this event are illustrated on Figure 2. The Monitoring Well Field Data sheet generated for this monitoring event is presented in Appendix A. The laboratory analytical results are presented in Appendix B. A discussion of the groundwater conditions observed during the fieldwork, the calculated groundwater gradient, and the laboratory analytical results for the groundwater samples is presented below.

3.1 Groundwater Conditions

On April 20, 2005, the measured depth to groundwater in the wells at the site ranged from 23.10 (MW9) to 28.39 (MW4) feet below the top of the well casing. Groundwater elevations calculated for the wells were between 551.46 (MW10) and 553.26 (MW11) feet above mean sea level.

The groundwater flow direction and gradient were initially contoured using the computer contouring and drafting program SURFER[®]. Based on this data, groundwater under the site varies from a southwesterly flow direction in the northern portion of the site to a southerly flow direction in the southern portion of the site at an approximate gradient of 0.011 (or 1.1 feet of vertical drop over 100 feet of horizontal distance). The groundwater contours and flow direction for this event are shown on Figure 2.

Petroleum hydrocarbon or MTBE odors were observed in the purge water generated from wells MW2, MW2B, MW3B, and MW5.

3.2 Laboratory Analytical Results

Laboratory analytical results indicate that contaminant concentrations at or above the Method Detection Limits (MDLs) employed by the laboratory were reported in samples collected from each of the site wells except MW8. Of these, contaminant concentrations at or above Action Levels and/or State Maximum Contaminant Levels (MCLs) were identified in each of the site wells except MW1 and MW10, as follows:

- The TPH-G concentrations in wells MW2, MW4, and MW5, with the highest concentration reported in well MW5 [110,000 micrograms per liter ($\mu\text{g/L}$)].
- The TPH-D concentration reported in well MW5 (3,800 $\mu\text{g/L}$).
- The benzene concentrations reported in wells MW2, MW2B, MW3B, MW4, MW5, MW6, and MW11, with the highest concentration reported in well MW5 (5,000 $\mu\text{g/L}$).
- The toluene, ethylbenzene, and total xylenes concentrations reported in well MW5 (820 $\mu\text{g/L}$, 2,800 $\mu\text{g/L}$, and 17,000 $\mu\text{g/L}$, respectively).
- The EDC concentrations reported in wells MW4 and MW11, with the highest concentration reported in well MW4 (24 $\mu\text{g/L}$).
- The MTBE concentrations reported in wells MW2, MW2B, MW3B, MW4, MW5, MW6, MW7, MW9, and MW11, with the highest concentration reported in well MW5 (130,000 $\mu\text{g/L}$).
- The TBA concentrations reported in wells MW2B, MW3, MW3B, MW6, and MW7, with the highest concentration reported in well MW7 (11,000 $\mu\text{g/L}$).

The duplicate groundwater sample (collected from MW7) contained concentrations of contaminants similar to those found in the MW7 sample. The trip blank did not contain the constituents analyzed in concentrations exceeding the laboratory MDLs.

The contaminant isoconcentration maps for TPH-G, benzene, MTBE, TBA, and EDC initially contoured using the computer contouring and drafting program SURFER[®], are presented on Figures 3, 4, 5, 6, and 7, respectively.

4.0 DISCUSSION

Comparison of the water level measurements taken for this event with those taken in February 2005 indicate that the groundwater elevations under the site have increased between 0.84 (MW10) to 1.07 (MW1) feet. Groundwater under the site varies from a southwesterly flow direction in the northern portion of the site to a southerly flow direction in the southern portion of the site at an approximate gradient of 0.011 (or 1.1 feet of vertical drop over 100 feet of horizontal distance). This flow direction is similar to that observed under the site, during the previous well monitoring event; however, the gradient is slightly steeper.

Comparison of the laboratory analytical results reported for samples collected for this event, with those for samples collected in February 2005, indicates the following information:

- In wells MW4 and MW11, located **up-gradient** the former USTs and dispenser islands, the changes in contaminant concentrations were variable. In well MW4: EDC and MTBE concentrations decreased, while TPH-G and BTEX concentrations increased. In well MW11: TPH-G, toluene, ethylbenzene, and total xylenes concentrations decreased, while benzene, EDC, and MTBE concentrations increased.
- In wells MW2, MW2B, and MW5, located **in the vicinity of** the former USTs and dispenser islands, the changes in contaminant concentrations were variable. In well MW2: TPH-G, TPH-D, BTEX, MTBE, TBA, and TAME concentrations decreased. In well MW2B: TPH-G, BTEX, EDC, MTBE, TBA, and TAME concentrations increased, while the TPH-D concentration decreased. In well MW5: TPH-G and BTEX concentrations increased, MTBE and TAME concentrations decreased, while the TPH-D concentration remained the same.
- In well MW3, MW3B, MW7, and MW9, located **down/ cross-gradient** of the former USTs and dispenser islands, the changes in contaminant concentrations were variable. In well MW3: TPH-G, BTEX, MTBE, and TBA concentrations decreased. In well MW3B: TPH-G, BTEX, EDC and MTBE concentrations decreased; while the TBA concentration increased. In well MW7: TPH-G, BTEX, and TBA concentrations decreased, while the MTBE concentration increased. In well MW9: the toluene concentration decreased, while the MTBE concentration increased.
- In wells MW1, MW6, and MW8, located **down-gradient** of the former USTs and dispenser islands, the changes in contaminant concentrations generally decreased. In well MW1: TPH-G, BTEX, MTBE, and TBA concentrations decreased. In well MW6: TPH-G, BTEX, MTBE, and TBA concentrations decreased. In well MW8: BTEX concentrations decreased.

- In well MW10, located **down gradient and off-site** of the former USTs and dispenser islands, benzene, toluene, and total xylenes concentrations increased.

Evaluation of the isoconcentration maps indicates the following:

- The TPH-G, benzene, and MTBE isoconcentration maps are similar and indicate that the concentrations are highest in the vicinity of well MW5, decreasing radially toward the remaining site wells.
- The TBA isoconcentration map indicates that the concentrations are highest in the vicinity of well MW7, which is located at the western margin of the property (cross-gradient of the USTs).
- The EDC isoconcentration map indicates that the concentrations are highest in the vicinity of well MW4, which is located up-gradient of the USTs, and decrease to the south-southeast (towards well MW11).

5.0 LIMITATIONS

This report, including all enclosed appendices, describes results of all or a portion of DMI-EMK Environmental Services, Inc.'s (DMI-EMK) investigation into subsurface conditions at the subject site. The findings and recommendations are based on the application of a variety of scientific and technical disciplines to data developed regarding the subject property. The data were developed by observation, sampling, and gathering of information (both documentary and oral) about the property. Some of these data are subject to change over time. Some of these data are based on information not currently observable or measurable, but recorded by documents or orally reported by individuals. The findings and recommendations are based, in part, on application of sampling techniques. Said techniques inherently involve a risk of overstating or understating the presence or severity of contamination. The findings and recommendations are based also on sampling only for the specific contaminants shown in the laboratory reports. The samples taken were not subjected to testing for every contaminant known to the environmental industry, and every biological and/or chemical condition known to the environmental industry.

DMI-EMK is not responsible for the accuracy of data not developed by DMI-EMK or its agents or subcontractors. DMI-EMK is not responsible for overstating or understating the presence or severity of contamination. DMI-EMK is not responsible for failing to test for contaminants or biological/chemical conditions it had no reason to know were of concern at the subject site. DMI-EMK has performed this investigation in a professional manner using that degree of skill and care exercised for similar projects under similar conditions by reputable and competent environmental consultants. No warranty, either expressed or implied, is made. DMI-EMK is not responsible for the ramifications caused by the concealment, withholding or failure to disclose of relevant information known to anyone contacted by DMI-EMK in connection with its work at the subject site.

This report and all field data, notes, laboratory test data on which it is based (hereinafter collectively designated "Information") were prepared by DMI-EMK solely for the benefit of DMI-EMK's client Mr. John Volk. Mr. John Volk has the legal right to release all or a portion of this Information, in his discretion, to third parties. Said third parties may not have access to all information upon which this report was based, nor access to prior reports, nor to other information developed and not placed in any report (hereinafter collectively designated "Additional Information"). The presence or absence of such additional Information may materially affect the statements contained in this report. Any use or reliance upon this report of Information by a party other than Mr. John Volk, therefore, shall be solely at the risk of such third party and without legal recourse against DMI-EMK, its employees, officers, or directors, regardless of whether the action in which recovery of damages is sought is based upon contract, tort, statute or otherwise.

Monitoring will increase at polluted site

More monitoring wells will be installed around the Corner Store gas station as a result of high pollution readings, said Steve Naylor of the Santa Barbara Fire Department Protection Services Division, Hazardous Materials Unit.

He said the goal is to "find the limits of the contamination. They will at the same time hopefully be installing a remediation system."

High levels of possible carcinogens recorded at the station in Santa Ynez on April 20 have added fuel to the flames of controversy swirling around adjacent Chumash annexations. The county Board of Supervisors will discuss the 5.8-acre annexation at 2:30 p.m. Tuesday in Santa Maria.

The California Regional Water Quality Control Board released figures July 15 showing the station sandwiched between the 6.9- and 5.8-acre Chumash annexation sites has the highest concentration of underground methyl tertiary butyl ether (MTBE), a potential carcinogen, of 194 Central Coast sites it monitors. High levels of benzene and other chemicals are also a concern.

Local citizens' groups have protested the annexations in part because annexation exempts the land from county and state environmental controls, often stricter than federal regulations.

The troubled station's saga began with a major leak discovered as a corrod of tanks were replaced in August 1989. It is unknown how long fuel had

been saturating the earth. Gas residue was found all the way to the bottom of the test well, 70 feet down.

Contaminated dirt from the tank removal was used for projects on the adjacent Chumash reservation by unauthorized individuals. Anonymous upstays called the Fire Department's Hazardous Materials Unit, which traced the soil to 151 and 153 Kalawashaiq, about 200 feet uphill from Zanja de Cota Creek.

Kerry Boyle of the HazMat Unit notified reservation environmental officer William Wyatt, who demanded the soil be removed.

Ironically, even as the contaminated soil was coming into the reservation, extensive cleanup work was underway in anticipation of Proposition 1A, which ultimately opened the doors to the casino operation.

Dozens of junked cars, myriad appliances, including Freon-laden refrigerators, and "every conceivable form of debris" was fished out of Zanja de Cota Creek, according to court documents.

The tribe later sparred with Torres Construction Company, the firm doing the cleanup. After a lawsuit and counter-suit, Torres declared bankruptcy. Six years later, on April 25 of this year, Torres was awarded \$309,950, together with interest thereon at the legal rate from date of plaintiff's breach, November 21, 1989, and costs by Superior Court Judge Zel Center.

The hazardous dirt from the Corner Store was excavated from the Kalawashaiq site and hauled

to the Santa Ynez Airport landfill adjacent to the reservation.

An environmental study prepared by Elinor Consultants for the Chumash's 69-acre annexation specifically noted an underground spill of undetermined size at the Corner Store gas station, but their attempt to drill test wells on Oct. 2, 2001, stopped just 15 feet below the surface, when they hit rocks.

"Because we were unable to sample groundwater during the investigation on the three properties," the report said, "the assessment data collected are of limited value in regard to determining whether the contamination beneath Volk's 76 Station is affecting the three properties."

Other drillers had better luck. DMJ-EMK, an environmental consultant hired by site owner John Volk, had already drilled three 70-foot-deep monitoring wells on Aug. 28 and 29, 2001.

"Based on the findings, it appeared there had been a significant release of gasoline to the subsurface soils and groundwater," stated the DMJ-EMK report. "Petroleum staining and odors were observed to the maximum depths explored of 70 feet below ground surface."

At an annexation meeting on Nov. 23, Bureau of Indian Affairs speaker Kevin Bearquiver was asked, "Will the BIA permit land to be taken if the land contains contaminants?" Mr. Bearquiver said annexations must be cleaned up.

William Eting's column runs Monday through Friday in the column on Mr. Eting's annual news column in the newspaper. You can reach him at william.eting@comcast.net or call 688-0200.

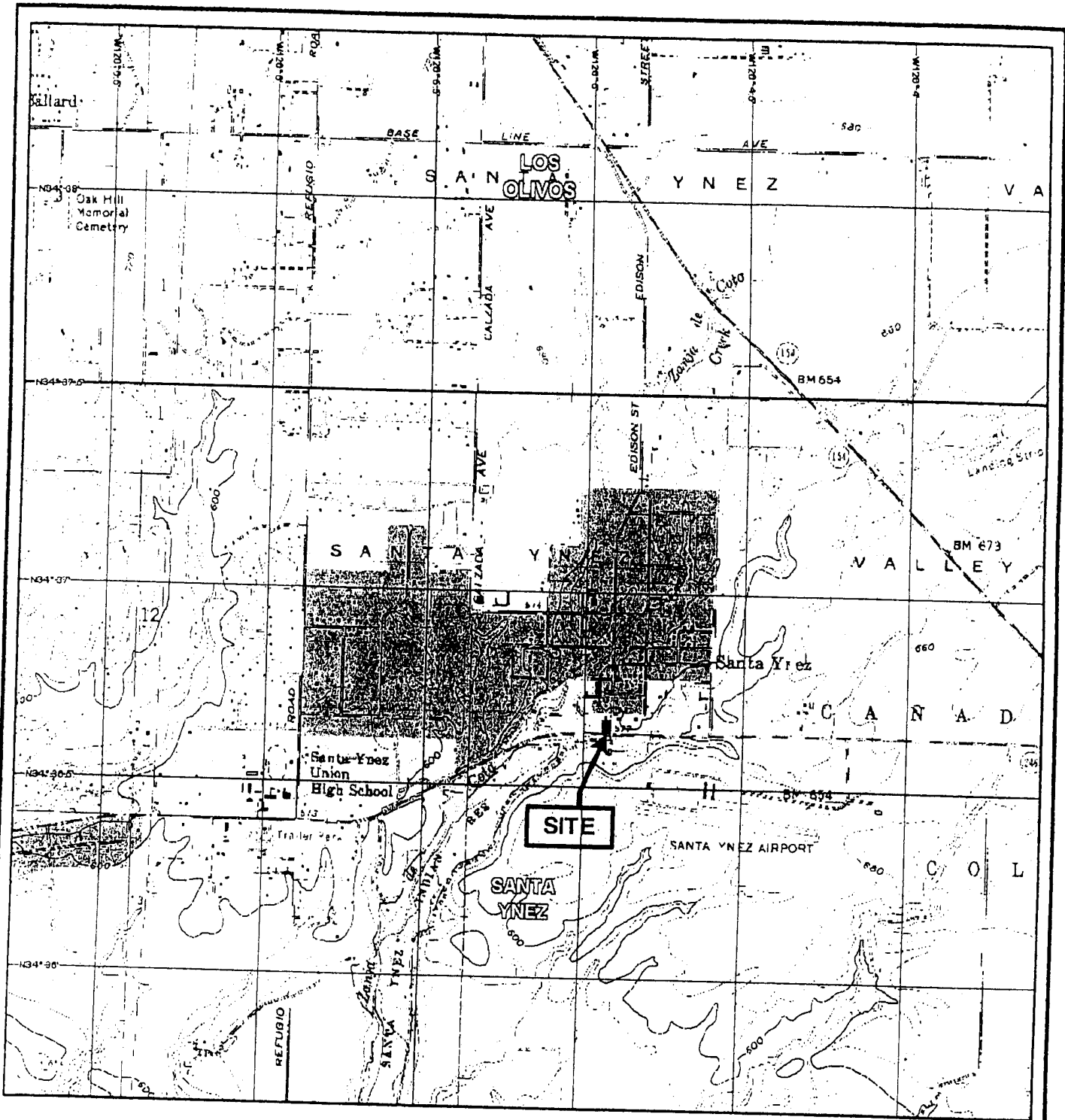


SANTA YNEZ
NOTEBOOK

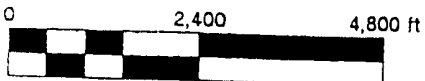
William Eting

5/10/03

EXHIBIT B



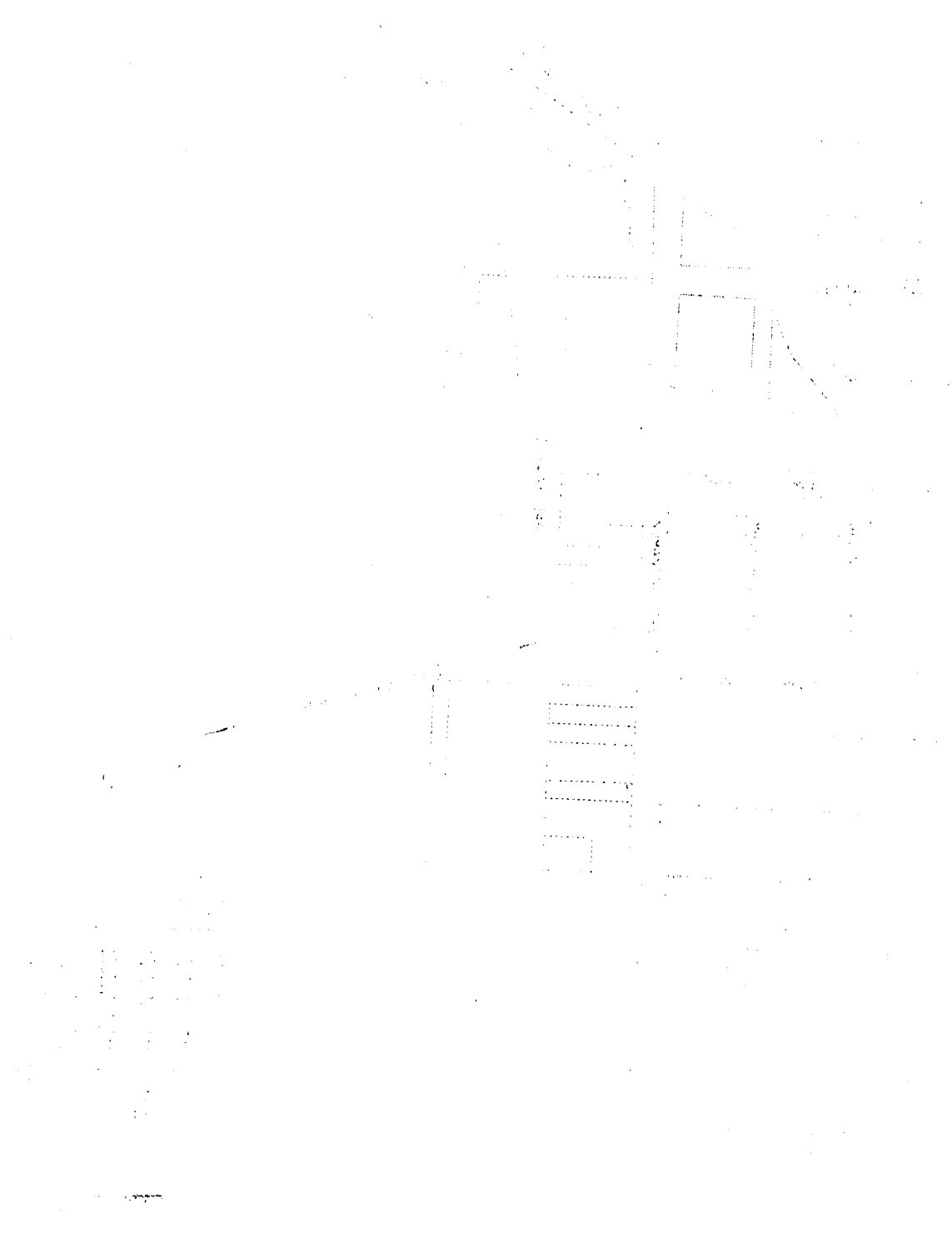
SCALE: 1" = 2,400'



SITE LOCATION
 VOLKS CORNER STORE
 3545 EAST HIGHWAY 246
 SANTA YNEZ, CALIFORNIA

DMI-EMK Environmental Services, Inc.

FIGURE 1



Very faint text or a signature at the bottom of the page, possibly a name or a date.

EXHIBIT C

July 21, 2005

James Fletcher, Superintendent
Department of the Interior
Bureau of Indian Affairs
Southern California Agency
1451 Research Park Drive, Suite 100
Riverside, CA 92507-2471

VIA OVERNIGHT MAIL

RE: July 21, 2005 Notice of Fee-to-Trust Acquisition Application (13 Parcels)

APNs: 143-242-001, -002

143-252-001, -002

143-253-002, -003, -004, -005, -006, -007, -008

143-254-001, -003

Dear Mr. Fletcher:

Thank you for the opportunity to provide comments on the proposed acceptance of title to real property in trust by the United States of America for the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation of California ("Tribe") in Santa Barbara County, California. The County of Santa Barbara ("County") received the above referenced Notice of (Non-Gaming) Land Acquisition Application on June 24, 2005. This letter responds specifically to your request for information and provides general comments in support of the County's opposition to the proposed trust acquisition.

Background

Since 2001 and including the present application, the Santa Ynez Band of Chumash Mission Indians has applied to have twenty-two parcels of land accepted into trust, totaling approximately twenty-six acres. The Tribe's existing reservation is 139 acres. The present application is for the acceptance of thirteen parcels (5.81 acres) into trust.¹

¹ The Notice of (Non-Gaming) Land Acquisition Application and the Tribe's Application indicate that the 13 parcels total approximately 5.68 acres. According to County records, the 13 parcels total 5.81 acres.

In 2002, the Tribe applied to have 5 of the 13 parcels taken into trust. The five parcels are 143-253-002, 143-253-007, 143-253-008 (a.k.a. Condit parcels), and 143-253-001 & 143-253-003 (a.k.a. Daniels parcels). On July 16, 2002, the County submitted comments to the BIA concerning these five parcels. One of the primary concerns expressed by the County at that time was that the Tribe's application did not describe the use or development intended for the parcels. The County also objected to the piecemeal approach to trust acquisitions and lack of adequate environmental review for such acquisitions. Beyond this, the County highlighted that the demand for County services provided to the parcels would continue and potentially increase, but that the parcels would not be subject to taxation or special assessments used to pay for those services. This would result in the County involuntarily subsidizing Tribal activity, use, and development on the parcels. The Tribe withdrew its 2002 application to have the 5 parcels taken into trust.

The present fee-to-trust application reintroduces the five parcels that were the subject of the Tribe's 2002 withdrawn application, and also introduces an additional eight parcels, for a total of 13 parcels. The additional eight parcels are: 143-253-003, 143-253-004, 143-253-005, 143-253-006; and 143-252-001, 143-252-002; and 143-242-001, 143-242-002. The location of the 13 parcels is shown in the attached map. See Exhibit A.

As will be further explained in this letter, the County continues to have significant objections to the removal of land from its jurisdiction, including these 13 parcels, in the absence of an enforceable inter-governmental agreement between the County and the Tribe that addresses the issues posed by the proposed trust acquisition.

Responses to Request for Information & Comments on Application

1. Impact resulting from removal of the land from the property tax rolls.

The Notice of (Non-Gaming) Land Acquisition requests information on "the annual amount of property taxes currently levied on the subject property allocated to your organization." Title 25 Code of Federal Regulation § 151.10 requires that the Secretary consider "the impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls," when the land is in unrestricted fee status. In the present case, the Tribe owns the parcels in unrestricted fee status. The regulations do not require that the Secretary only look at the impact of the trust acquisition resulting from the loss of tax revenue in the current tax year in isolation. Rather, the Secretary must look generally at the impact of the acquisition. Since trust status is perpetual, the County's position is that the Secretary must analyze and consider the total impact created by the loss of property tax revenue over time and in perpetuity.

The secured property taxes on the parcels for the 2004-2005 tax year total approximately \$48,000. The total amount of property taxes projected to be levied on the parcels is \$684,397 in 10 years, \$1,245,840 in 20 years, and \$2,394,212 in 50 years. This amount is based upon the current fair market value of the property plus a 2.0% inflation factor.

stated in future value. Tax revenue from these parcels is allocated as follows: County's General Fund (20.7%), College Elementary School District (20.7%), Santa Ynez Valley High School District (16.1%); Education Revenue Augmentation (14%); Santa Barbara County Fire Protection District (12.4%); A. Hancock Jr. Community College District (5.5%); Santa Ynez CM SVC District (4.9%); County School Service Fund (3.8%); and Other (1.8%). In addition, 0.00805% goes to the Santa Ynez Community Service (Bond) and 0.07860% goes to the Santa Ynez River Water Conservation Improvement District. (See Exhibit B)

If developed as proposed in the Draft Santa Ynez Valley Community Plan, the total amount of property taxes projected to be levied on the parcels is \$5,551,929 in 10 years, \$12,319,700 in 20 years, and \$42,885,004 in 50 years. This amount is based upon the future value of the property developed as C-2 Limited Commercial and C-2 Mixed Use Overlay as per the Draft Santa Ynez Valley Community Plan. Tax revenue from these parcels would be allocated as identified in the previous paragraph. (See Exhibit B)

Of particular concern to the County is that the County continues to provide essential services to trust land, but does not receive property tax dollars to support those services. Urban land in the unincorporated area of the County is relatively rare and the taking of such land out of County jurisdiction and placing it into trust will reduce the ability of the County, the Fire District, the school districts, the college district, and certain single purpose and multipurpose special districts to benefit from the potential future development and growth in property taxes on such land.

Unlike in past historical times, there is no indication that the Tribe has an inability to pay property taxes on its land. As a result, there is no risk that the Tribe would lose these parcels due to an inability to pay property taxes. Indeed, the Tribe considers the amount of property taxes to be *de minimis* according to its application. Thus, one of the primary rationales for United States trusteeship over the land is absent in the present case. Moreover, since the Tribe has indicated it presently owns the land, and has no plans to develop it, and can easily afford the taxes on the parcels, there is no urgent need to place the land into trust. On the other hand, the jurisdictional problems such a fee to trust acquisition will pose, as explained further below, present significant difficulties unless an intergovernmental agreement can be reached between the Tribe and the County to address these issues PRIOR to acceptance of the land into trust.

2. Special assessments and amounts thereof that are currently assessed against the property in support of your organization.

As noted below, special assessments for flood control and fees for sewer service are collected by the County for these parcels which would be lost if the parcels are placed into trust. Although the actual amount is minimal, the cumulative loss of revenue for property taxes, special assessments, etc. is substantial and negatively impacts the County's ability to provide services.

3. Any government services that are currently provided to the property by your organization.

(a) Law Enforcement. The County presently provides law enforcement services to the property.

California is a mandatory Public Law 280 state. As a result, it will have criminal jurisdiction over the land if it is taken into trust, and also will have the continued attendant responsibility of providing law enforcement on such land. (28 U.S.C.A. §1360(a).) The primary burden of providing law enforcement falls on the County Sheriff's Department.

Since the Tribe has not released or formulated plans for the use or development of the property, the Sheriff's Department can only speculate that demand for public safety related services such as police and fire protection will increase as the number of visitors to tribal facilities increases. While the County and the Tribe have now reached agreements for the compensation of public safety mitigation on existing tribal trust land, any additional expansion will increase the demands on the Sheriff's Department. The lands under current consideration are unimproved properties. These properties require minimal law enforcement services. Any improvement upon these lands would increase the demands on the Sheriff's Department to the extent to which they are developed.

(b) Fire Protection and Emergency Services. Santa Barbara County Fire Department currently provides all risk services including fire protection services and emergency medical aid to all thirteen parcels. Any additional structures or vehicular traffic will cause an increase in services provided by the Fire Department. Significantly, the removal of these parcels from the Fire District will eliminate tax revenue that the Fire District relies on to pay for the services and supplies needed to operate the Fire Department. Without a written agreement with the Tribe, the Fire Department would lose valuable Fire District monies.

(c) Public Works. The County is responsible for providing public works such as roads, infrastructure, flood control, sewer, and other public works related services and facilities to the parcels. In particular, special assessments for flood control and fees for sewer service are collected by the County for these parcels which would be lost if the parcels are placed into trust. Depending on the nature of current or future uses and development of the land, the demand for additional or increased public works related services is anticipated.

(d) Other. The County provides a variety of services to properties in the unincorporated area of the county as needed. These services include environmental health services, animal control services, and building and safety related services, all of which are subject to increase if the parcels are developed.

4. How the Intended use is consistent or inconsistent with the current zoning.

(a) **Zoning:** Six of the thirteen parcels are zoned CH-Highway Commercial. The purpose and intent of this zone district is to provide areas adjacent and accessible to highways or freeways exclusively for uses which serve the highway traveler. (County Code Chapter 35, Article III Inland Zoning Ordinance, §35-228, see Exhibit C.) The remaining seven parcels are zoned C-3 General Commercial. The purpose of this zone district is to provide areas for wholesale and heavy commercial uses and services which are necessary within the County but which are not suited to the light commercial district. The intent is to provide for these areas while protecting adjacent uses from negative impacts such as noise, odor, lighting, and traffic. (County Code Chapter 35, Article III Inland Zoning Ordinance, §35-226, see Exhibit C.) These zone districts provide for certain uses without permits, and other uses with minor or major conditional use permits. The zone districts also specify setbacks for buildings and structures, as well as height limits. Parking and landscaping is also addressed by these zoning regulations. In addition to these zoning regulations, federal and state environmental and other laws operate to protect archeological and other resources that may exist on the parcels.

Santa Ynez Valley Community Plan: The Santa Barbara County Board of Supervisors initiated the Draft Santa Ynez Valley Community Plan in February, 2005 as an update to the County's Comprehensive Plan. The Plan proposes to rezone the remaining Highway Commercial land use and zoning designations to General Commercial, including the 13 parcels proposed to be taken into trust. The Highway Commercial zone allows commercial uses that focus on serving the traveling public including mini-markets, convenience stores, bus terminals and service stations, and other uses that are not considered appropriate or consistent with the small town character of the Santa Ynez Township commercial district. Additionally, the Santa Ynez Valley Community Plan proposes a Mixed-Use Overlay be applied to FTT parcels 143-253-002 to 008. The Mixed-Use Overlay will further restrict a number of more intensive commercial uses allowed in the General Commercial (C-2) zones which are inappropriate with the small town character of Santa Ynez. Some of these uses include auto sales lots, mini-storage facilities, lumber yards, and trailer and truck rentals.

(b) **Present & Future Use and Development of Trust Land:** The Tribe's application states:

The Tribe has no current planned uses for the property. The purpose of the acquisition and transfer from fee to trust status will be for future long range planning and land banking. The property will serve to enhance the Tribe's land base as is contemplated by its land consolidation plan which supports tribal self-determination. Placing the land into trust will allow the Tribe jurisdiction over such things as the overt appearance of the property, as well as any cultural resources contained within the property. Tribal lands also comprise the heart of

the non-economic resources of a tribe by serving cultural, spiritual, or educational purposes among others.

The existing zone districts reflect the County's general plan, which is the overarching planning document adopted by the Board of Supervisors to balance and plan for a variety of land uses in the community. Any present or future use or development of the land that does not follow the actual or equivalent terms of the County's zoning code is in conflict with the zoning for the parcels. In recent years, the Tribe has constructed massive development on tribal land that is far out of scale with the local community. Based on the Tribe's past practice of maximizing development and use of its land, the County anticipates that the Tribe will similarly develop any newly acquired trust land, even if exact plans for such development are not presently known.

Under Section 35-329 of Article III of the County's zoning ordinance, final development plans for all buildings and structures must be approved by the County Board of Architectural Review prior to the issuance of any land use permits.² The purpose of the architectural review board is "to encourage developments which exemplify the best professional design practices so as to enhance the visual quality of the environment, benefit surrounding property values, and prevent poor quality design."³ The extensive development contemplated by the Tribe makes it one of the more aggressive developers in the Santa Ynez Valley. Without knowing the nature of tribal laws governing architectural and building practices, if any, the County can only speculate future development contemplated on the FTT parcels will conflict with the scale and character of the Township of Santa Ynez and, among other things, result in visual impacts and decreased property values. The County hopes to work with the Tribe to reduce any negative aesthetic impacts, like it would with any private developer. However, without a written commitment from the Tribe to work with the County to harmonize land uses and mitigate off-reservation impacts caused by on-reservation development, the Secretary cannot be sure that jurisdictional conflict regarding architectural and building regulations will not occur. For that reason, the County cannot support the present FTT application in the absence of such mitigation and cooperative agreements.

(c) Socio-economic Impacts: The County is concerned that the socioeconomic effects of the FTT transfer have not been adequately addressed since the application does not discuss the loss of state and local regulatory control over the property, and the addition of tribal regulatory control over the property. The shift in regulatory control affects more than just the County's ability to collect property taxes. The Township of Santa Ynez currently has only 26 acres of commercially designated land available for future use. The current 5.68 acre FTT application, together with the recent 6.9 acre FTT request will permanently remove 12.58 acres, or 48 percent of the remaining commercial land. This represents a significant economic impact to the future vitality and prosperity of the Santa Ynez commercial district, its property owners, and community residents and visitors.

² County Code Zoning Ordinance, Chapter 35, Article III, Section 35-329
³ Id.

(d) **Affordable Housing:** The FTT request will adversely affect the County's ability to provide State mandated affordable housing for the residents of the Santa Ynez Valley. The draft Santa Ynez Valley Community Plan will amend the County's Housing Element by incorporating land use and zoning changes to meet the Valley's "fair share" of affordable housing units. The proposed "Mixed-Use" zoning overlay is a primary mechanism to achieve production of affordable housing in Santa Ynez by encouraging mixed use residential development in the commercial core of Santa Ynez Township. The draft Santa Ynez Valley Community Plan proposes to apply the Mixed Use Overlay to FTT parcels 143-253-002 to 008. Removal of these lands from County jurisdiction will significantly impair the County's ability to meet State affordable housing mandates given the limited acreage of remaining vacant commercial land available in Santa Ynez for development of mixed-use affordable residential units.

In the absence of a complete socioeconomic impact analysis of the current and past FTT requests, and agreed upon mitigation and cooperative agreements, the County cannot support the present FTT application.

(e) **Jurisdictional Issues:** The Tribe has jurisdiction over its members wherever they may be situated, on tribal or non-tribal land. Acquiring additional tribal land does not affect or enhance this jurisdiction. To the extent the Tribe desires to acquire jurisdiction over additional land, that jurisdiction comes at the expense of the jurisdiction of the state and local governments. Loss of County jurisdiction over these parcels will impair the County's ability to plan and regulate community growth and land use in the area.

In order to balance the jurisdictional interests of tribal and local governments, the County believes it is essential that the Tribe and the County reach an inter-governmental agreement PRIOR to any further land being accepted into trust. The County believes that such agreements are essential to balance the jurisdictional and land use interests of the Tribe and the County when land is proposed to be taken into trust.

Environmental Review - Categorical Exclusion under NEPA is Inappropriate

The Application indicates that "Categorical Exclusions are being issued for the property." The County never received any notice issued pursuant to the National Environmental Policy Act (NEPA) supporting or informing it of such Categorical Exclusions. The County's position is that a Categorical Exclusion is inappropriate for such trust acquisitions.

The Application does not address the cumulative significant impacts of the proposed action in the context of other Reservation development plans. Instead, the manner in which the previous and existing fee to trust applications have been submitted and processed results in piecemeal analysis without the benefit of understanding the Tribe's goals and long-range plans regarding overall land acquisition efforts. For instance, the Tribe currently has a separate fee to trust application involving 6.9 acres of land that are proximate to the 5.8 acres addressed in this comment letter. This piecemeal approach is

contrary to the principles of NEPA and the California Environmental Quality Act, which require cumulative impact analyses. Therefore, the categorical exemption requested by the Tribe in the application is not appropriate.

In some cases, the Tribe has indicated that it does not know how it will use the land. In this case, rather than assume nothing will happen with the land, the County's position is that the Secretary must analyze the impacts resulting from highest and best use of the land over time – including maximum development possible – in order to realistically evaluate the effect of the trust acquisition on the local community presently and in the future. In addition, under NEPA review, the impacts of this fee to trust application should be analyzed within the broader context of all foreseeable tribal land acquisitions and development on such land. In particular, this context includes development on the Tribe's reservation and on the previously proposed 6.9 acre trust acquisition north of the reservation.

Conclusion/Recommendations

In the absence of an existing enforceable intergovernmental agreement executed by the Tribe and the County that addresses the concerns expressed in this letter, the County must strenuously oppose the Secretary's acceptance of the thirteen parcels into trust. The County believes there is no urgent need for the Tribe to have the land taken into trust and that there is adequate time for the parties to reach an agreement PRIOR to the Secretary's decision on the Application. Additionally, the County urges the Secretary to reconsider the requested Categorical Exclusion under NEPA and to analyze the proposed trust acquisition under the assumption that the future use and development of the property will be the highest and best use possible for the property. Finally, the County recommends and requests that the Secretary hold public hearings in the Santa Ynez Valley on the proposed trust acquisition prior to making a decision on the Application.

Thank you for the opportunity to provide the above comments on the proposed acceptance of title to real property in trust by the United State of America for the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation of California (Tribe) in Santa Barbara County, California. If you have any questions about this letter or would like further input or information from the County of Santa Barbara or any of its Departments concerning the proposed acquisition, please do not hesitate to contact Jennifer Klein at (805) 568-2950, or Jim Laponis at (805) 568-3400.

Respectfully,

Honorable Susan Rose, Chair
Board of Supervisors
County of Santa Barbara

Exhibit A: Map Charts of Property Taxes and Special Assessments by APN
Exhibit B: Charts of Property Taxes and Special Assessments by APN
Exhibit C: Santa Barbara Inland Zoning Code, Art. III, §§35-226, 35-228

cc: Members, Santa Barbara County Board of Supervisors
Honorable Arnold Schwarzenegger, Governor
Honorable Barbara Boxer, United States Senator
Honorable Dianne Feinstein, United States Senator
Honorable Lois Capps, United States Congresswoman
Honorable Elton Gallegly, United States Congressman
Honorable Tom McClintock, California State Senator
Honorable Abel Maldonado, California State Senator
Honorable Pedro Nava, California State Assemblyman
Honorable Sam Blakeslee, California State Assemblyman
Bill Lockyer, Attorney General, California Department of Justice
Sara J. Drake, Deputy Attorney General, State of California
Peter Kaufman, Deputy Attorney General, State of California
Vincent Armenta, Chairman, Santa Ynez Band of Chumash Mission Indians
Brenda Tomaras, Attorney for Santa Ynez Band
Gregg Albright, Caltrans District 5 Director
Steve Price, Caltrans District 5
Marlene Demery, City Manager, City of Solvang
Steve Thompson, City Manager, City of Buellton
Chris Dahlstrom, Santa Ynez River Water Conservation District, Improvement
District No. 1
Bonnie Ottoman, Santa Ynez Community Services District
Santa Barbara County Airport Land Use Commission
Santa Ynez Valley Airport Authority
Scott Morgan, Governor's Office of Planning and Research

CERTIFICATE OF SERVICE

I do hereby certify that service of the enclosed opposition to motion to dismiss with opposing declarations and exhibits has been made upon the following by mailing a true and correct copy thereof, postage prepaid, on this 10th day of August 2005:

Mr. Vincent Armenta, Chairperson
Santa Ynez Band of Mission Indians
P.O. Box 517
Santa Ynez, CA 93460

California State Clearinghouse
Office of Planning and Research
P.O. Box 3044
Sacramento, CA 95812-3044

Brenda L. Tomaras, Esq.
Miranda, Tomaras & Ogas, LLP
For Santa Ynez Band of Chumash
Mission Indians
10755-F Scripps Poway Pkwy, #281
San Diego, CA 92131

Mr. Paul Dobson, Deputy Legal Affairs
Secretary
Office of the Governor of California
State Capitol Building
Sacramento, CA 95814

Ms. Sara J. Drake, Deputy Attorney General
State of California
Department of Justice
P.O. Box 944255
Sacramento, CA 94244-2550

Mr. William F. Brown, Jr.
Chief of Police
Lompoc Police Department
107 Civic Center Plaza
Lompoc, CA 93436

James Peterson, District Director
Office of the Honorable Dianne Feinstein
750 B Street, Suite 1030
San Diego, CA 92101

Ms. Marlene F. Demery
City Manager
City of Solvang
P.O. Box 107
Solvang, CA 93465

Ms. Joni Gray, Chairperson
County Board of Supervisors
Santa Barbara County
401 E. Cypress Avenue
Lompoc, CA 93436

Honorable Russ Hicks
City of Buellton
140 W. Highway 246
Buellton, CA 93427

Lieutenant Mal Parr
Sheriff's Department
P.O. Box 156
Buellton, CA 93427

Honorable Marty Blum, Mayor
Santa Barbara City Hall
P.O. Box 1990
Santa Barbara, CA 93101-1990

Honorable Brooks Firestone
Third Supervisorial District
105 E. Annapamu Street
Santa Barbara, CA 93101

Mr. Camerino Sanchez, Chief of Police
Santa Barbara, Police Department
215 E. Figueroa Street
Santa Barbara, CA 93101

Ms. Beth Hannon
City Hall, Planning Department
P.O. Box 1990
Santa Barbara, CA 93101

Mr. Joseph E. Holland
Santa Barbara County Assessor's Office
105 E. Annapamu Street, Suite 204
Santa Barbara, CA 93102

Regional Solicitor
Pacific Southwest Regional Office
U.S. Department of the Interior
2800 Cottage Way, Room E-1712
Sacramento, CA 95825

Chief Warner McGrew
Fire Department, City of Santa Barbara
121 W. Carrillo Street
Santa Barbara, CA 93101

Dated August 10, 2005

Regional Director Pacific Regional Office
Bureau of Indian Affairs
2800 Cottage Way
Sacramento, CA 95825

Mr. Phil Demery
Director of Public Works
County of Santa Barbara
Santa Barbara, CA 93101

Mr. Steven Shane Stark
Office of the County Counsel
County of Santa Barbara
105 E. Annapamu Street, Suite 201
Santa Barbara, CA 93101

Ms. Bobbie Martin, General Manager
Santa Ynez Community Services District
P.O. Box 667
Santa Ynez, CA 93460

Superintendent
Southern California Agency
1451 Research Park Drive, Suite 100
Riverside, CA 92507-2471

Guy R. Martin
Perkins Coie, LLP
607 14th Street, N.W., Suite 800
Washington, D.C. 20005-2011

Respectfully Submitted,



James E. Marino
Attorney at Law
By Steve Pappas
POLO
P.O. Box 722
Los Olivos, CA 93441