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10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA
12 WESTERN DIVISION
13

14 PRESERVATION OF LOS OLIVOS and
15 PRESERVATION OF SANTA YNEZ,

16 Plaintiffs,

17 vs.

18 UNITED STATES DEPARTMENT OF THE
19 INTERIOR, DIRK KEMPTHORNE, in his
20 official capacity as Secretary, BUREAU OF
21 INDIAN AFFAIRS, by and through Pacific
22 Regional Director, CLAYTON GREGORY, in
23 his official capacity, and the INTERIOR
24 BOARD OF INDIAN APPEALS

25 Defendants

26 THE SANTA YNEZ BAND OF MISSION
27 INDIANS

28 Defendants – Intervenor

Case No.: CV-06-1502 AHM (CTx)

**FEDERAL DEFENDANTS’
MEMORANDUM IN SUPPORT OF
MOTION FOR REMAND TO
DEPARTMENT OF THE INTERIOR**

**Date: September 25, 2006
Time: 10:00 am**

Hon. A. Howard Matz

1 Pursuant to the Court's July 25, 2006, Order entering the parties' stipulated briefing
2 schedule, the Federal Defendants were to certify and file the administrative record of the
3 challenged agency decision by August 28, 2006. Federal Defendants have determined, however,
4 that the Bureau of Indian Affairs ("BIA") cannot certify the record for the Court's and parties'
5 review due to an error in the appeal process within the agency. In the course of preparing the
6 record for filing, the BIA discovered that the record that was before the Interior Board of Indian
7 Appeals ("IBIA" or "Board") was incomplete. A subset of documents that were part of the
8 record of decision-making before the BIA and, which therefore, should have been before the
9 IBIA on appeal, were inadvertently omitted from the record certified to the Board.
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12 Upon substantial consideration and consultation within the Department of the Interior, Federal
13 Defendants have determined that a remand is warranted to correct the agency error before this
14 appeal from the IBIA under the Administrative Procedure Act, 5 U.S.C. §§ 701-706, is
15 considered by this Court. A remand to the Department of the Interior will allow the IBIA to
16 reconsider its decision in light of the documents that were not included in the record before the
17 Board. Once remanded, the BIA would seek a limited reopening of the Plaintiffs' IBIA appeal in
18 order for the Board to determine whether the excluded documents affect its determination that
19 the Plaintiffs lacked standing to appeal. Assuming, *arguendo*, that the IBIA finds the documents
20 do not warrant reversal of its original determination, upon issuance of a new Board decision, the
21 BIA would publish a new 30-day notice of determination to acquire the land in trust, in turn
22 allowing for another appeal to federal court. *See* 25 C.F.R. § 151.12(b).

23 Plaintiffs suffer no prejudice by virtue of a remand. The Interior Department previously
24 assured Plaintiffs that it will stay acquisition of the land in trust status until a final decision on
25 the merits is issued by this Court, which agreement rendered Plaintiffs' request for a preliminary
26 injunction from this Court moot. The effect of a remand to the Interior Department would be to
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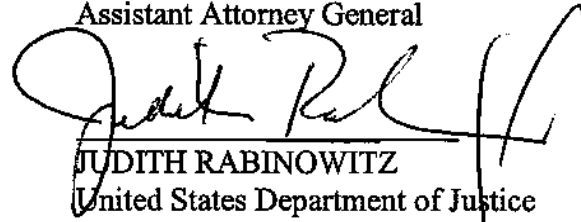
1 preclude acquisition of the land in trust until after re-issuance of a 30-day notice of determination
2 to acquire the land in trust.

3 Pursuant to Local Rule 7-3, Federal Defendants have conferred with counsel for Plaintiffs
4 and the Tribal Intervenor Defendant regarding the substance of the remand motion. Intervenor-
5 Defendant has indicated its non-opposition to the motion. At the time of the conferral, Plaintiffs'
6 counsel was unable to provide a position on the Federal Defendants' motion.
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8 Wherefore, Federal Defendants respectfully request that their Motion for Remand to the
9 Interior Department be granted.
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1 DATED: August 28, 2006

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