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

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

16 Plaintiffs,

17 vs.

18 UNITED STATES DEPARTMENT OF THE
19 INTERIOR, P. LYNN SCARLETT, in her
20 official capacity as Acting Secretary,
21 BUREAU OF INDIAN AFFAIRS, by and
through Pacific Regional Director, CLAYTON
22 GREGORY, in his official capacity, and the
INTERIOR BOARD OF INDIAN APPEALS

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

) **DEFENDANTS' ANSWER**

1 Come now the Defendants United States Department of the Interior, P. Lynn Scarlett,
2 Acting Secretary of the Interior,¹ Clayton J. Gregory, Regional Director for the Pacific Regional
3 Office, Bureau of Indian Affairs, and the Interior Board of Indian Appeals (collectively "Federal
4 Defendants"), by and through their undersigned counsel, and hereby answer the Complaint as
5 follows:

- 6 1. Paragraph 1. Federal Defendants admit that on February 3, 2006, the Interior Board of
7 Indian Appeals ("IBIA") issued the decision attached as Exhibit A to the Complaint; that
8 on January 14, 2005, the Pacific Regional Director of the Bureau of Indian Affairs
9 ("BIA") issued the notice of decision to acquire land in trust status for the Santa Ynez
10 Band of Chumash Mission Indians ("Tribe") attached as Exhibit B to the Complaint; that
11 the land comprises approximately 6.9 acres and is adjacent to the Tribe's reservation; and
12 that on February 17, 2006, the BIA published the notice of final agency determination to
13 acquire the land in trust status attached as Exhibit C to the Complaint. Federal
14 Defendants admit that a casino, hotel, and spa are located on the Tribe's reservation, but
15 deny that those are the only facilities located on the reservation. The remaining
16 allegations in Paragraph 1 state characterizations of Plaintiffs' Complaint and Exhibits, to
17 which no responses are required. The Exhibits speak for themselves. Except as so
18 admitted, Federal Defendants deny the allegations in Paragraph 1 of the Complaint.
- 19 2. Paragraph 2. Paragraph 2 states a characterization of Plaintiffs' case together with legal
20 conclusions, to which no responses are required. To the extent that a response is deemed
21 necessary, Federal Defendants deny the allegations in Paragraph 2 of the Complaint.
- 22 3. Paragraph 3. Paragraph 3 states a characterization of Plaintiffs' case to which no
23 response is required. Plaintiffs' prayer for injunctive relief has been rendered moot by the
24 Federal Defendants' agreement to stay acquisition of the land in trust status until a final
25 decision on the merits is issued.

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28 ¹ Pursuant to Fed.R.Civ.P. 25(d), P. Lynn Scarlett, Acting Secretary of the Interior, should be substituted for Gale A. Norton.

- 1 4. Paragraph 4. Federal Defendants are without information sufficient to form a belief as to
2 the truth or falsity of the allegations in Paragraph 4 of the Complaint, and therefore deny
3 the same.
- 4 5. Paragraph 5. Federal Defendants are without information sufficient to form a belief as to
5 the truth or falsity of the allegations in Paragraph 5 of the Complaint, and therefore deny
6 the same.
- 7 6. Paragraph 6. Federal Defendants are without information sufficient to form a belief as to
8 the truth or falsity of the allegations in Paragraph 6 of the Complaint, and therefore deny
9 the same.
- 10 7. Paragraph 7. Federal Defendants admit the identity of the Federal Defendants, however,
11 P. Lynn Scarlett, Acting Secretary of the Interior, should be substituted for Gale A.
12 Norton as a defendant in her official capacity. The remaining allegations in Paragraph 7
13 state legal conclusions to which no responses are required.
- 14 8. Paragraph 8. Admit.
- 15 9. Paragraph 9. Paragraph 9 states legal conclusions to which no responses are required.
- 16 10. Paragraph 10. Federal Defendants admit that on February 17, 2006, the BIA published
17 the notice of final agency determination to acquire the land in trust status attached as
18 Exhibit C to the Complaint. The remaining allegations in Paragraph 10 state legal
19 conclusions to which no responses are required.
- 20 11. Paragraph 11. Paragraph 11 states legal conclusions to which no responses are required.
- 21 12. Paragraph 12. Federal Defendants admit that the Tribe submitted an original and revised
22 land-into-trust application for the 6.9-acres on November 8, 2000, and May 6, 2002,
23 respectively. Federal Defendants admit that the Tribe proposes, among other uses of the
24 land, the development of a small professional/retail building, but deny that the Tribe
25 proposes to use the land for gaming or gaming-related purposes. Federal Defendants
26 admit that a casino, hotel, spa, and parking lots are located on the Tribe's reservation, but
27 deny that those are the only facilities located on the reservation. The remaining
28 allegations in Paragraph 12 state characterizations of the Tribe's application, to which no

1 responses are required. The application speaks for itself. Except as so admitted, Federal
2 Defendants deny the allegations in Paragraph 12 of the Complaint.

3 13. Paragraph 13. Federal Defendants admit that on January 14, 2005, the BIA issued the
4 notice of decision to acquire land in trust status attached as Exhibit B to the Complaint.
5 The remaining allegation in Paragraph 13 states a characterization of the notice of
6 decision, to which no response is required. The notice of decision speaks for itself.

7 14. Paragraph 14. Federal Defendants admit that Plaintiffs filed the Notice of Appeal
8 attached as Exhibit D to the Complaint. The remaining allegations in Paragraph 14 state
9 characterizations of the Notice of Appeal together with legal conclusions, to which no
10 responses are required. The Notice of Appeal speaks for itself. To the extent that a
11 response is deemed necessary, Federal Defendants deny the allegations in Paragraph 14
12 of the Complaint.

13 15. Paragraph 15. Federal Defendants admit that the Environmental Assessment was
14 prepared by the Tribe and subsequently adopted by the BIA. The remaining allegations
15 in Paragraph 15 state characterizations of Plaintiffs' Notice of Appeal together with legal
16 conclusions, to which no responses are required. To the extent that a response is deemed
17 necessary, Federal Defendants deny the allegations in Paragraph 15 of the Complaint.

18 16. Paragraph 16. Admit.

19 17. Paragraph 17. Federal Defendants admit that on August 11, 2005, Plaintiffs filed a
20 response to the Pacific Regional Director's Motion to Dismiss. The remaining
21 allegations in Paragraph 17 state characterizations of Plaintiffs' response to the Motion to
22 Dismiss together with legal conclusions, to which no responses are required. Plaintiffs'
23 response to the Motion to Dismiss speaks for itself. Except as so admitted, Federal
24 Defendants deny the allegations in Paragraph 17 of the Complaint.

25 18. Paragraph 18. Federal Defendants admit that on February 3, 2006, the IBIA entered the
26 decision attached as Exhibit A to the Complaint. The remaining allegations in Paragraph
27 18 consist of characterizations of the IBIA's decision to which no responses are required.
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1 *Santa Ynez Valley Concerned Citizens v. Pacific Regional Director, BIA*, 42 IBIA 189
2 (Feb. 3, 2006), speaks for itself.

3 19. Paragraph 19. Paragraph 19 consists of characterizations of the APA, to which no
4 responses are required. The APA speaks for itself.

5 20. Paragraph 20. Paragraph 20 consists of characterizations of 25 U.S.C. § 465, 25 C.F.R.
6 Part 151, 516 DM 6 (attached as Exhibit E to the Complaint), and 602 DM 2 (attached as
7 Exhibit F to the Complaint), to which no responses are required. These authorities speak
8 for themselves.

9 21. Paragraph 21. Paragraph 21 consists of characterizations of NEPA, to which no
10 responses are required. NEPA speaks for itself.

11 22. Paragraph 22. Paragraph 22 states legal conclusions together with characterizations of 25
12 C.F.R. Part 151; *TOMAC v. Norton*, 193 F. Supp. 2d 182 (D.D.C. 2002), *aff'd*, 433 F.3d
13 852 (D.C. Cir. 2006); *CETAC v. Norton*, 2004 U.S. Dist. LEXIS 27498 (D.D.C. Apr. 23,
14 2004); and *City of Sherrill v. Oneida Indian Nation*, 544 U.S. 197 (2005), to which no
15 responses are required. These decisions and 25 C.F.R. Part 151 speak for themselves.

16 23. Paragraph 23. Paragraph 23 states legal conclusions to which no responses are required.

17 24. Paragraph 24. Paragraph 24 states legal conclusions to which no responses are required.

18 25. Paragraph 25. Federal Defendants admit that in support of the Plaintiffs' response to the
19 Pacific Regional Director's Motion to Dismiss, Plaintiffs submitted several declarations
20 as alleged. Federal Defendants are without information sufficient to form a belief as to
21 the truth or falsity of the allegation in the second sentence of the paragraph, and therefore
22 deny the same. The remaining allegations in Paragraph 25 consist of characterizations of
23 the declarations to which no responses are required. To the extent that a response is
24 deemed necessary, Federal Defendants deny these allegations.

25 26. Paragraph 26. Deny.

26 27. Paragraph 27. The first sentence states a legal conclusion and characterizes the IBIA
27 decision, to which no responses are required. The decision speaks for itself. The second
28 and third sentences consist of characterizations of the declarations, to which no responses

1 are required. The fourth sentence states a legal conclusion to which no response is
2 required. The fifth and sixth sentences consist of legal conclusions together with
3 characterizations of NEPA, 25 C.F.R. § 151.10(h), and 602 DM 2 (attached as Exhibit F
4 to the Complaint), to which no responses are required. These authorities speak for
5 themselves. To the extent that a response is deemed necessary, Federal Defendants deny
6 each of the allegations in Paragraph 27.

7 28. Paragraph 28. Paragraph 28 states characterizations of Plaintiffs' response to the Motion
8 to Dismiss together with legal conclusions, to which no responses are required.
9 Plaintiffs' response to the Motion to Dismiss speaks for itself. To the extent that a
10 response is deemed necessary, Federal Defendants deny the allegations in Paragraph 28
11 of the Complaint.

12 29. Paragraph 29. Paragraph 29 states legal conclusions and characterizations of 25 U.S.C.
13 § 465 and 25 C.F.R. Part 151, to which no responses are required. These authorities
14 speak for themselves. To the extent that a response is deemed necessary, Federal
15 Defendants deny the allegations in Paragraph 29 of the Complaint.

16 30. Paragraph 30. Paragraph 30 states legal conclusions to which no responses are required.

17 31. Paragraph 31. Federal Defendants deny the first sentence of this paragraph. Plaintiffs'
18 prayer for injunctive relief has been rendered moot by the Federal Defendants' agreement
19 to stay acquisition of the land in trust status until a final decision on the merits is issued.
20 The remaining allegations in Paragraph 31 state legal conclusions to which no responses
21 are required.

22 32. Paragraph 32. Paragraph 32 states legal conclusions and characterizations of 25 C.F.R.
23 Part 151 and NEPA, to which no responses are required. These authorities speak for
24 themselves. To the extent that a response is deemed necessary, Federal Defendants deny
25 the allegations in Paragraph 32 of the Complaint.

26 33. Paragraph 33. Paragraph 33 states legal conclusions to which no responses are required.
27 To the extent that a response is deemed necessary, Federal Defendants deny the
28 allegations in Paragraph 33 of the Complaint.

- 1 34. Paragraph 34. Paragraph 34 states legal conclusions to which no responses are required.
2 To the extent that a response is deemed necessary, Federal Defendants deny the
3 allegations in Paragraph 34 of the Complaint.
- 4 35. Paragraph 35. Federal Defendants reassert and incorporate by reference its answers to
5 Paragraphs 1 through 34 of the Complaint.
- 6 36. Paragraph 36. Paragraph 36 consists of characterizations of 5 U.S.C. §§ 702 and 706 to
7 which no responses are required. Sections 702 and 706 speak for themselves.
- 8 37. Paragraph 37. Paragraph 37 states legal conclusions to which no responses are required.
9 To the extent that a response is deemed necessary, Federal Defendants deny the
10 allegations in Paragraph 37 of the Complaint.
- 11 38. Paragraph 38. Deny.
- 12 39. Paragraph 39. Federal Defendants reassert and incorporate by reference its answers to
13 Paragraphs 1 through 38 of the Complaint.
- 14 40. Paragraph 40. Paragraph 40 states characterizations of Plaintiffs' case together with legal
15 conclusions, to which no responses are required. To the extent that a response is deemed
16 necessary, Federal Defendants deny the allegations in Paragraph 40 of the Complaint.
- 17 41. Paragraph 41. Federal Defendants are without information sufficient to form a belief as
18 to the truth or falsity of the allegations in Paragraph 41 of the Complaint, and therefore
19 deny the same.
- 20 42. Paragraph 42. Deny.
- 21 43. Paragraph 43. Deny. Further, Plaintiffs' prayer for injunctive relief has been rendered
22 moot by the Federal Defendants' agreement to stay acquisition of the land in trust status
23 until a final decision on the merits is issued.
- 24 44. Paragraph 44. Deny. Further, Plaintiffs' prayer for injunctive relief has been rendered
25 moot by the Federal Defendants' agreement to stay acquisition of the land in trust status
26 until a final decision on the merits is issued.
- 27 45. The allegations in the Prayer for Relief constitute Plaintiffs' claims for relief to which no
28 responses are required. Further, Plaintiffs' prayer for injunctive relief has been rendered

1 moot by the Federal Defendants' agreement to stay acquisition of the land in trust status
2 until a final decision on the merits is issued.

3 **GENERAL DENIAL**

4 All allegations of the Complaint that have not been specifically admitted, denied, or
5 otherwise answered are hereby denied.

6 **AFFIRMATIVE DEFENSES**

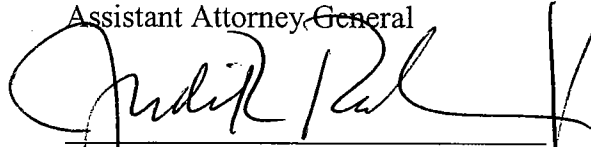
- 7 1. Plaintiffs lack standing to bring the claims alleged in the Complaint.
8 2. Plaintiffs have failed to state a claim for which relief may be granted.
9 3. The Court lacks subject matter jurisdiction over this matter.

10
11 WHEREFORE, Federal Defendants pray that:

- 12 1. The Court dismiss Plaintiffs' Complaint against them;
13 2. The Court award Federal Defendants their costs and disbursements in this action;
14 and
15 3. The Court award such other relief as is just and proper.

1 DATED: May 15, 2006

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CERTIFICATE OF SERVICE

I, Kevin Mann, declare as follows:

I am employed in San Francisco, California; I am over the age of eighteen years and am not a party to this action; my business address is 301 Howard Street, Suite 1050, San Francisco, California 94105. On May 15, 2006, I served by U.S. Mail the within:

FEDERAL DEFENDANTS' ANSWER

by placing a true copy thereof in an envelope addressed to each of the persons named below at the address shown:

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



Kevin Mann