

**AMENDMENT TO REQUEST TO LIMIT DISCLOSURE OF
CONFIDENTIAL INFORMATION**

AND

MOTION FOR LEAVE TO SUBMIT ADDITIONAL DOCUMENTS

Introduction

On December 11, 2006, this Board issued an order accepting a joint (if possible) or separate reports recommending procedures on remand of this matter from the U.S. District Court for the Central District of California, to address whether additional briefing should be conducted on the issue of Appellants' standing to challenge the Pacific Regional Director's decision to acquire 6.9 acres in trust for the Santa Ynez Band of Chumash Mission Indians ("Tribe"), in light of documents that were inadvertently omitted from the administrative record (the "supplemental record documents"). The Board also invited the Appellants and the Tribe to file responses to the Regional Director's request to limit disclosure of certain supplemental record documents that contain information protected from disclosure under Section 304 of the National Historic Preservation Act. On January 12, 2007, the Board granted an unopposed motion by the Regional Director for an extension, until February 2, 2007, for the parties to comply with the Board's December 11, 2006 order.

In the Regional Director's view, additional briefing is not necessary to the Board's reexamination, in light of the supplemental record documents, of its February 3, 2006 order (42 IBIA 189) dismissing this appeal for lack of standing. There are only a few supplemental record documents for the Board to consider on remand and the parties have already submitted approximately 92 pages of briefs (excluding declarations and exhibits) on the issue of standing, including 54 pages by the Appellants and other citizens groups originally parties to this appeal.

33 pages by the Tribe, and 5 pages by the Regional Director. The Appellants believe that additional briefing is necessary, however, and therefore the Regional Director is submitting this separate report.

In addition, the Regional Director is hereby amending his request to limit disclosure of confidential information. Following the completion of consultation under Section 304 of the National Historic Preservation Act on January 25, 2007, the Regional Director has released two additional supplemental record documents, in redacted form, to the Appellants and the Tribe.

Finally, at the request of the Appellants, and over the objection of the Tribe, the Regional Director moves for leave to submit for the Board's consideration additional documents consisting of approximately 1,300 pages of public comment letters favoring or opposing the placement of land in trust status for the Tribe. The grounds for this motion are described below.

I. REGIONAL DIRECTOR'S PROPOSED PROCEDURES ON REMAND

The issue that the Board is being asked to address on remand is whether, in light of a small number of documents that were inadvertently omitted from the administrative record originally certified to the Board, the Board perceives any reason to disturb its order of February 3, 2006 dismissing this appeal for lack of standing. As described more fully in the Regional Director's filing to the Board on November 30, 2006 (at pages 4-6),¹ a large majority of the additional documents that the Regional Director submitted to the Board on remand were included in the BIA's original submission to the Board, and are not supplemental.

The comparatively few supplemental record documents consist of: (1) an architectural report and two archaeological reports and related correspondence; (2) notice letters pursuant to

¹ The filing was captioned "Response to Appellants' Report Re Procedures on Remand Pursuant to 43 C.F.R. 4.316 and Petition to File Supplemental Record Documents and Request to Limit Disclosure of Confidential Information."

25 C.F.R. § 151.10 requesting comments from state and local governments on the potential impacts of placing the subject 6.9 acres in trust; (3) general correspondence, including requests by the County of Santa Barbara for extensions of the comment period on the Tribe's application; (4) comment letters expressing support for or opposition to the Tribe's 6.9 acre land-into-trust application; and (5) two video recordings of local meetings.

As the Board may determine on its own without further briefing from the parties, these few supplemental record documents support the Board's decision to dismiss this appeal. The Regional Director understands that, having considered the supplemental record documents, the Tribe has arrived at the same conclusion. Moreover, issuance of the Board's next order regarding standing without additional briefing from the parties would be consistent with the district court's directive that the remand proceeding be completed "at the earliest feasible time." See Court's Order of October 6, 2006, in *Preservation of Los Olivos, et al. v. Department of the Interior, et al.*, No. CV-06-1502 AHM (CTx) (C.D. Cal.). If the Board nonetheless orders additional briefing, the Regional Director respectfully requests that the parties be ordered to confer and to jointly propose a briefing schedule.

II. AMENDMENT TO REGIONAL DIRECTOR'S REQUEST TO LIMIT DISCLOSURE OF CONFIDENTIAL INFORMATION

As an amendment to the Regional Director's request to limit disclosure of confidential information under 43 C.F.R. § 4.31(d), the Regional Director is hereby submitting redacted copies of two documents (Letter from the Acting Regional Director to the State Historic Preservation Officer (Sept. 23, 2002) and Gibson's Archaeological Consulting, "Inventory and Assessment of Historic Properties" (Aug. 10, 2000)) that were initially withheld from the Appellants and Tribe when the supplemented administrative record was submitted to the Board. Complete copies of these documents were provided under seal to the Board at that time. After

consultation under Section 304 of the National Historic Preservation Act with the Advisory Council on Historic Preservation, the Secretary determined that these documents could be redacted as indicated and disclosed. *See* E-mail from Tom McCulloch to Erika Martin Seibert (Jan. 25, 2007), **Exhibit A**, hereto. Redacted copies of these documents have already been produced to the Appellants and Tribe pursuant to 43 C.F.R. § 4.31(d)(2) and for their consideration in their respective responses to the Regional Director's request to limit disclosure of confidential information.

III. MOTION FOR LEAVE TO SUBMIT PUBLIC COMMENT LETTERS

The Regional Director now also moves for leave to submit approximately 1,300 pages of public comment letters regarding the Tribe's activities on its lands and/or efforts to place lands in trust. The Regional Director makes this motion at the request of the Appellants, over the objections of the Tribe, and in the interests of providing the Board with the complete record of comments predating the Regional Director's decision to acquire the subject 6.9 acres in trust and potentially related to the Tribe's 6.9 acre application underlying this appeal. Most importantly, regardless of whether the Board decides that the documents ought to be included in the record on appeal, *the documents on their face do not support Appellants' claims to have standing in this appeal and hence briefing regarding their effect on the Board's order of February 3, 2006 dismissing this appeal is not necessary.* Even if the public comment letters are to some degree relevant to the Tribe's 6.9 acre application underlying this appeal, the letters are both irrelevant and immaterial to the single legal issue that is currently before the Board -- Appellants' standing.

The public comment letters were not previously submitted to the Board because they were determined largely or entirely to relate to projects separate from the 6.9 acre application, including a 1.8 acre land-into-trust application and a casino expansion project on the Tribe's

current reservation. As reflected in correspondence attached hereto as **Exhibit B**,² the issue of whether to submit the public comment letters to the Board along with the supplemental record documents was carefully considered by the Bureau. The issue was also discussed among all of the parties and the parties agreed that, subject to the Appellants' and Tribe's independent review of the comment letters, the letters did not need to be included.

Having reviewed the comment letters, the Appellants now contend that they

bear directly on the standing issues before the IBIA in, at least two important respects: (1) they generally demonstrate that the Regional Office of the Pacific Region of the Bureau of Indian Affairs (BIA) is in the practice of soliciting comments directly from the community members and groups such as POSY and POLO as well as comments from applicants in connection with fee-to-trust applications and (2) the BIA substantively considers such comments from the community and community groups in deciding such fee-to-trust applications and collaborates with the applicant in connection with managing public comment.

Letter from John Rochefort to Thomas Blaser (Jan. 8, 2007), **Exhibit C**, hereto. In response to the Appellants and in opposition to inclusion of the public comment letters in the record on appeal, the Tribe argues that the Regional Director did not consider the comments when making his decision regarding the 6.9-acre parcel and that, while the Bureau does not turn away unsolicited comments from the public, neither does the Bureau solicit them. See Letter from Brenda Tomaras to Thomas Blaser (Jan. 10, 2007), **Exhibit C**, hereto.

² Letter from Daniel Shillito to Brenda Tomaras and Nancie Marzulla (Nov. 8, 2006); Letter from Lisa Gilford to Daniel Shillito and Judith Rabinowitz (Nov. 13, 2006); Memorandum from Clayton Gregory to Thomas Blaser (Nov. 17, 2006); Memorandum from Thomas Blaser to Clayton Gregory (Nov. 30, 2006); Letter from Amy Dutschke to John Rochefort and Roger Marzulla (Dec. 5, 2006). The two memoranda between Clayton Gregory and Thomas Blaser are being provided to give context to the parties' initial agreement not to include the public comment letters in the record on appeal and no broader waiver of any privilege is intended.

In order to assist the Board to determine whether and, if so, how these public comment letters ought to be considered in the context of this appeal, following is a brief explanation of the origin of these comment letters and their association with the Tribe's efforts to place lands in trust and other tribal activities. The above-referenced letters by the Appellants and Tribe at Exhibit C hereto, and the Regional Director's response to those letters that follows, should obviate any need for briefing on the issue of the impact of the public comment letters on the Board's February 3, 2006 order dismissing this appeal for lack of standing. If, after consideration of the parties' respective positions, the Board is nonetheless inclined to consider the public comment letters *in the context of Appellants' standing*, the Regional Director respectfully requests an opportunity to brief both the relevance and materiality of the documents to Appellants' standing.

The Tribe's 6.9-acre application that is being challenged in this appeal was submitted to the Bureau on November 8, 2000. Pursuant to 25 C.F.R. § 151.10, the Bureau solicited comments on the application from state and local governments (but not the general public) in April 2001. The Tribe updated its application on May 6, 2002 following the discovery of the remains of a historic, intact Chumash village site on the subject 6.9 acres. Later, on May 29, 2002, the Tribe separately applied to have an additional 1.8 acres placed in trust, which application was withdrawn. Also, during April and May 2002, the Tribe received comments on a casino expansion project that it was planning to conduct on its current reservation. Some of the persons who responded to the Tribe regarding the casino expansion project sent copies of their comments to the Bureau. However, that project was unrelated to the Tribe's applications to place lands in trust. *See* Letter from Brenda Tomaras to Jim Haynes (May 14, 2002), Exhibit D, hereto.

The public comment letters that the Regional Director is seeking leave to submit to the Board were generated between April and July 2002 and were not solicited by the Bureau. Appellants are simply wrong that the letters demonstrate that the Bureau is in the practice of soliciting comments from community members and groups such as Appellants, or that the Bureau did so in this case. Indeed, a large proportion of the comments are form letters that were copied from newspaper advertisements posted in local newspapers by a citizens group, Santa Ynez Valley Concerned Citizens. An example of these letters is attached hereto as **Exhibit E**. These form letters state in pertinent part, "I am a citizen of the Santa Ynez Valley located in the County of Santa Barbara. I am writing to request that you decline the May 29, 2002 application by the [Tribe] to annex 1.8 acres of newly acquired land to the Reservation The recently announced casino expansion plans only serve to magnify the problem." Many other comment letters express support for the Tribe's 1.8-acre application, the Tribe's proposed casino expansion project, and/or the Tribe's efforts in general to place lands in trust. On their face, the public comment letters pertain largely or entirely to the separate 1.8 acre application, which the Tribe has withdrawn, and/or the unrelated casino expansion project on the Tribe's current reservation.

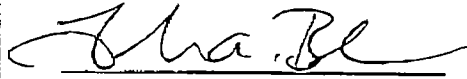
Notwithstanding that the public comment letters were not solicited by the Bureau and that they relate to other projects by the Tribe, the Bureau acknowledges that they may be relevant to the Tribe's then-pending 6.9 acre application to the extent they indicate opposition to or support for the Tribe's efforts in general to place land in trust. In addition, while the Bureau does not solicit public comments, the Bureau also generally does not turn comments away and simply considers them to the degree merited. The record reflects that the Bureau read and categorized the public comment letters, and that it found two of the letters to be noteworthy because they

were submitted by celebrities whose comments might attract media attention. See Enclosures to Letter from Daniel Shillito to Brenda Tomaras and Nancie Marzulla (Nov. 8, 2006) at Exhibit A. In the spirit of 25 C.F.R. § 151.10 (“If the state or local government responds within a 30-day period, a copy of the comments will be provided to the applicant, who will be given a reasonable time in which to reply . . .”), the Bureau also forwarded the public comment letters to the Tribe for its consideration. Unlike the comments that the Bureau solicited from the state and local governments, however, the Regional Director did not discuss the public comment letters in his letter of decision on the Tribe’s 6.9-acre application.

The consideration that the Bureau gave to the public comment letters is really beside the point at this time, however, because while the comment letters are potentially relevant to the Tribe’s 6.9-acre application to some degree, they are completely irrelevant to Appellants’ standing as a threshold jurisdictional matter. A plaintiff cannot manufacture standing for himself or herself simply by submitting comments (much less unsolicited comments) on an agency action. In this case, Appellants do not even allege that they or their members submitted the comment letters.

In sum, the public comment letters are at best marginally relevant to the Tribe’s 6.9 acre application underlying this appeal and they are totally irrelevant and immaterial to Appellants’ standing, which is the only issue now before the Board. It would therefore be reasonable for the Board to exclude the letters from the record on appeal. The Regional Director requests, however, that they be included in order to avoid a dispute over the completeness of the record.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read 'Tha. Bl', written over a horizontal line.

Daniel G. Shillito
Thomas A. Blaser
Attorneys for Pacific Regional Director
Bureau of Indian Affairs

Dated: February 2, 2007

CERTIFICATE OF SERVICE

RE: Preservation of Los Olivos and Preservation of Santa Ynez v. Pacific Regional Director,
Bureau of Indian Affairs

I, the undersigned, declare that:

I am a citizen of the United States, over the age of eighteen, and am not a party to this litigation. On February 2, 2007, I served the

**“REGIONAL DIRECTOR’S REPORT RECOMMENDING
PROCEDURES ON REMAND
AND
AMENDMENT TO REQUEST TO LIMIT DISCLOSURE OF
CONFIDENTIAL INFORMATION
AND
MOTION FOR LEAVE TO SUBMIT ADDITIONAL DOCUMENTS”**

via FAX (excluding enclosures) and FEDERAL EXPRESS, addressed as follows:

U.S. Department of the Interior
Office of Hearings and Appeals
Interior Board of Indian Appeals
801 N. Quincy Street, MS-300-QC
Arlington, Virginia 22203
Telephone: 703-235-3816
Fax: 703-235-3199

and by placing a true copy enclosed in a sealed envelope via REGULAR MAIL (excluding enclosures), addressed as follows:

John M. Rochefort
Lisa Gilford
Weston, Benshoof, Rochefort,
Rubalcava & MacCuish, LLP
333 South Hope Street, 16th Floor
Los Angeles, CA 90071

Brenda L. Tomaras
Tomaras & Ogas
10755-F Scripps Poway Parkway
Suite 281
San Diego, CA 92131

Attorneys for Preservation of Los Olivos
and Preservation of Santa Ynez
Telephone: (213) 576-1000
Fax: (213) 576-1100

Attorneys for Santa Ynez Band of Chumash,
Mission Indians
Telephone: (858) 554-0550
Fax: (858) 777-5765

Roger J. Marzulla
Nancie G. Marzulla
Marzulla & Marzulla
1350 Connecticut Avenue, N.W.
Suite 410
Washington, DC 20036

Seth P. Waxman
Jonathan E. Nuechterlein
Wilmer, Cutler, Pickering, Hale &
Dorr, LLP
2445 M Street, NW
Washington, DC 20337

Attorneys for Santa Ynez Band of Chumash
Mission Indians
Telephone: (202) 822-6760
Fax: (202) 822-6774

Attorneys for Santa Ynez Band of Chumash
Mission Indians
Telephone: (202) 663-6000
Fax: (202) 663-6363

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

Executed this 2nd day of February, 2007.



Thomas A. Blaser

EXHIBIT A



"Tom McCulloch"
<tmcculloch@achp.gov
>

01/25/2007 02:00 PM
EST

To: <erika_seibert@nps.gov>
cc: "Javier Marques" <jmarques@achp.gov>
Subject: Section 304 withholding request

Ms. Erika Martin Seibert
National Register Archaeologist
National Park Service
Washington DC

Erika, pursuant to Section 304 of the National Historic Preservation Act (NHPA) the National Park Service has consulted with the Advisory Council on Historic Preservation (ACHP) about the Bureau of Indian Affairs' (BIA) intention to withhold select information about a significant archaeological site because release could cause significant invasion of privacy or harm the historic property, or impede its use as a traditional religious site by practitioners.

Since the information was developed as part of the BIA's compliance with Section 106 of the NHPA, the ACHP's regulations (36 CFR Part 800.11(c)) require the Secretary of the Interior to consult with the ACHP in making decisions to withhold or release this information. Based on the material we have reviewed, and discussions with you, we do not object to this information being withheld from public disclosure.

If you have any questions, do not hesitate to call me at 202-606-8554.

Sincerely, Tom McCulloch

Tom McCulloch, Ph.D., R.P.A.
Archaeologist
Advisory Council on Historic Preservation
Washington DC 20004
202.606.8554

EXHIBIT B

UNITED STATES GOVERNMENT

memorandum

NOV 17 2006

Federal Express 8484 6497 3573

DATE:

REPLY TO

ATTN OF: Regional Director, Pacific Region, Bureau of Indian Affairs

SUBJECT: Case No.: CV-06-1502 AHM (CTx) and IBIA Docket No. 05-50-A

TO: Thomas Blaser, Office of the Solicitor, Division of Indian Affairs, MS-6456-MIB

As you know, our Regional Solicitor, Dan Shillito, recently sent a letter to the Santa Ynez Band of Chumash Indians in the above referenced appeal requesting that the Tribe and its attorney review their records for comment letters during the period of 2002 for one or more land acquisition applications.

On November 8, 2006 and November 14, 2006, we received by Federal Express, the requested information from the Tribe. The first package contained 342 pages and the second contained 958 pages. As Mr. Shillito explained to the Tribe, these comment letters were not included in the administrative record that was originally submitted to the IBIA. We determined their existence after it was noted that the BIA file for the 6.9 acre application contained correspondence to the Tribe and internal memos that referenced the comment letters. Because the correspondence was maintained in BIA's 6.9 acre file, we felt that the comment letters could relate to said application.

Based on our preliminary review of the letters, we believe that they entirely relate to an 1.8 acre land acquisition application submitted by the Tribe in January of 2002. The BIA issued a Notice of Application for the 1.8 acre application on May 29, 2002 which initiated a 30-day comment period. By letter dated December 8, 2004, the Tribe later withdrew the 1.8 acre application.

We ask that you also review the comment letters and advise as to whether or not you think any of the letters should be included in the record in the subject litigation and the related administrative appeal.

ag 6/7



United States Department of the Interior

OFFICE OF THE SOLICITOR
Pacific Southwest Region
2800 Cottage Way
Room E-1712
Sacramento, California 95825-1890

IN REPLY
REFER TO:

November 8, 2006

Brenda L. Tomaras
Tomaras & Ogas
10755-F Scripps Poway Parkway
Suite 281
San Diego, CA 92131

Nancie Marzulla
Marzulla & Marzulla
1350 Connecticut Avenue, N.W.
Suite 410
Washington, DC 20015

Re: *Preservation of Los Olivos, et al. v. Department of the Interior, et al.*, No. CV-06-1502 AHM (CTx) (C.D. Cal.)

Dear Ms. Tomaras and Ms. Marzulla:

The Bureau of Indian Affairs (BIA), Pacific Regional Office, is completing assembly and organization of the Administrative Record in the above-captioned appeal of the BIA's determination to acquire 6.9 acres in trust for the Santa Ynez Band of Mission Indians (Tribe). Based on information in the BIA's records, there is a subset of documents (described in greater detail below) that the BIA has not located, and which potentially relates to this acquisition. We believe that the BIA transmitted copies or possibly even originals of these documents to the Tribe and/or to Ms. Tomaras, who we understand handled the land-into-trust application at issue and represented the Tribe in the appeal of the BIA's approval of the application to the Interior Board of Indian Appeals (IBIA). Hence, we are politely requesting that you review your files and communicate and coordinate with your client regarding review of the Tribe's files.

If the documents are located, please send them to the Pacific Regional Office, to the attention of Terisa Draper, Realty Specialist. Please be sure to include any and all transmittal letters associated with the documents. Please also prepare and retain a copy of the documents for the Tribe, unless and until the BIA confirms receipt of the documents and determines that they are not relevant to this appeal.

As mentioned above, in the process of preparing the Administrative Record for certification to the district court, the BIA found that a Compact Disk containing over five thousand pages of

documents, many of which were duplicates, had been provided to the IBIA only in electronic form. In order to prepare a complete and well-organized Administrative Record, it was necessary for the BIA to review its files and incorporate paper copies of these documents where appropriate into the record. In the course of doing so, the BIA located correspondence with the Tribe and internal BIA memoranda from 2002 that identify a number of comment letters from mid- to late-2002 regarding one or more land-into-trust applications by the Tribe. Despite its best efforts, the BIA has not located these comment letters and the BIA's records indicate that copies (or perhaps originals) may have been sent to Ms. Tomaras and/or to the Tribe. We also believe that it is likely that these records were shared with the Tribe in the spirit of 25 C.F.R. § 151.10, which provides applicants an opportunity to receive and reply to the comments of the state and local governments.

The land-into-trust application for the 6.9 acres was submitted to the BIA in 2000. In May 2002, the Tribe submitted another land-into-trust application for 1.8 acres, which we understand was ultimately withdrawn. It is most likely, therefore, that the comment letters from mid- to late-2002 relate to the 1.8 acres and not the 6.9 acres. Nonetheless, the BIA seeks to confirm this by reviewing the comment letters from 2002. We are enclosing the correspondence and internal memoranda that describe the comment letters. As described in these documents, the overwhelming majority of the comment letters appear to be either form letters submitted in response to newspaper advertisements that included an example form letter, or comment letters in support of the Tribe's efforts to place land in trust.

Please do not hesitate to call me if you or the Tribe has any questions.

Sincerely,


Daniel Shillito
Regional Solicitor

Enclosures

cc: Vincent Armenta, Chairman, Santa Ynez Band of Mission Indians
John M. Rochefort, Esq.
Terisa Draper, Realty Specialist, BIA-PRO

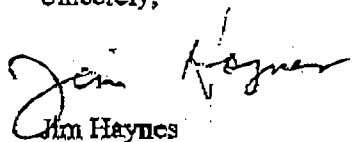
July 19, 2002

Santa Ynez Band of Chumash Indians
P.O. Box 517
Santa Ynez, California 93460
Attention: Ms. Laura Ray

Dear Ms. Ray,

Enclosed are approximately 100 comments from the citizens of Santa Ynez, Solvang and near by communities regarding the Tribe's Fee-to-Trust applications.

Sincerely,


Jim Haynes



IN REPLY REFER TO:

UNITED STATES
DEPARTMENT OF THE INTERIOR

BUREAU OF INDIAN AFFAIRS
SOUTHERN CALIFORNIA AGENCY
2038 IOWA AVENUE, SUITE 101
RIVERSIDE, CALIFORNIA 92507-2471
PHONE (909) 278-6624 FAX (909) 278-6641

MEMORANDUM

Date: August 2, 2002

To: Regional Director, BIA, Pacific Regional Office, Sacramento, CA

From: Superintendent - Southern California Agency

Subject: Proposed Trust Acquisition by the Santa Ynez Band of Mission Indians

To date the Southern California Agency has received approximately 750 comment letters that were generated by a newspaper ad published on July 10, 2002 by the "Santa Ynez Valley Concerned Citizens" group.

What additionally attracted my attention to this voluminous public response was that out of the 750 comments, there were 2 that should be noted. These 2 people are media celebrities, one being, Ms. Rona Barrett, a show business gossip columnist and Mr. Ralph Story, a well recognized retired television news anchor man, who worked many years for CBS in Los Angeles. Due to the notoriety of these two celebrities, it may attract media attention that will eventually find its way to your office.

The Fee-To-Trust personnel have been working close with the Tribe on this issue, and is sending them all of the comments for their response. The Tribe has planned a public relations campaign to address the concerns of the local community.

A handwritten signature in black ink, appearing to read "Virgil Townsend".

Virgil Townsend
Superintendent

MEMO TO FILE

8/02/02

SANTA YNEZ COMMENT LETTERS

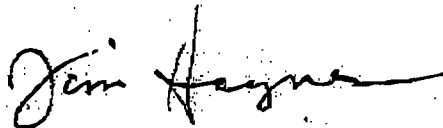
A total of 120 comment letters were received on 7/17/02, which were forwarded to the Tribal representative, Sharon Redthunder at PRO, and Brenda Tomaras of California Indian Legal Services. All subsequent mail has been forwarded to the above parties.

The FTT Office received 126 comment letters on 7/22/02, the majority of the comments were in the form of a newspaper ad which was mailed to the Santa Ynez Tribe.

On 7/29/02, 194 comment letters were received by the Southern California Agency (SCA) FTT Office. A large majority of these comments were registered in the form of an open letter that was posted in the July 10, 2002 issue of the Santa Ynez Valley Newspaper. This ad was paid for by the "Santa Ynez Valley Concerned Citizens" declaring their opposition to any tribal development in the community.

On 8/1/02, 309 comments were received by the SCA FTT Office. The majority of comments were registered on the July 4th, 2002 newspaper advertisement.

On 8/2/02, 14 comments were received by the SCA FTT Office for a running total of 764 comments to date.



Jim Haynes
Realty Specialist



UNITED STATES
DEPARTMENT OF THE INTERIOR

IN REPLY REFER TO:

BUREAU OF INDIAN AFFAIRS
SOUTHERN CALIFORNIA AGENCY
2038 IOWA AVENUE, SUITE 101
RIVERSIDE, CALIFORNIA 92507-2471
PHONE (909) 276-6624 FAX (909) 276-6641

COPY

November 19, 2002

Mr. Vincent Armenta, Chairman
Santa Ynez Band of Chumash Indians
P.O. Box 517
Santa Ynez, California 93460
Attn: Laura Ray

Dear Mr. Armenta:

Enclosed for your records are a total of 262 letters of support for your pending Fee-To-Trust applications that we have received in our office. Also enclosed are 13 letters of opposition to any Tribal land acquisition for the Santa Ynez Band of Mission Indians

If you have any questions, do not hesitate to call me at (909) 276-6624, Extension 227.

Sincerely,

Jim Haynes
Realty Specialist

Enclosure:



WESTON BENSHOOF
 ROCHEFORT RUBALCAVA MACCUISH LLP
 ATTORNEYS AT LAW

(415) 578-1114
 rbifford@wbocounsel.com

November 13, 2006

VIA FACSIMILE AND U.S. MAIL

Daniel G. Shillito, Regional Solicitor
 United States Department of the Interior
 Office of the Solicitor
 Pacific Southwest Region
 2800 Cottage Way, Room E-1712
 Sacramento, CA 95825-1890
 (916) 978-5694

Judith Rabinowitz, Esq.
 U.S. Department of Justice
 Indian Resources Section
 301 Howard Street
 Suite 1050
 San Francisco, CA 94105
 (415) 744-6476

Re: *Preservation of Los Olivos, et al. v. Department of the Interior, et al.*
 No. CV-06-1502 (C.D.Cal.)

Dear Counsel:

I am counsel for Preservation of Los Olivos and Preservation of Santa Ynez ("POLO/POSY") in their action against the Department of Interior, along with Mark Rochefort of this office. I write in response to Mr. Shillito's letter of November 8, 2006, a copy of which I have attached for your convenience. You will note that it appears that we did not receive the entire letter. Although the fax we received consisted of three pages including the cover sheet, the second page of the letter begins mid-sentence and at least a portion of a paragraph is missing. The letter also mentions a set of enclosures we did not receive. Would you kindly send us a complete document, including the referenced enclosures, at your earliest convenience?

While we will reserve full comment until after we have had a chance to review the entire letter, we have several preliminary concerns about the government's continued difficulty in assembling a complete Administrative Record in this matter which we wish to address at this time. First, from what we have of the letter, it appears that the missing documents consist entirely of comment letters from 2002 concerning the Tribe's land to trust applications. It is unclear whether these comment letters relate to the Tribe's application for the 6.9 acre parcel, the 1.8 acre parcel, or both. Would you please confirm whether our understanding of the missing materials and what they pertain to is

333 SOUTH HOPE STREET • SIXTEENTH FLOOR • LOS ANGELES, CA 90071 • TEL 213 576 1000 • FAX 213 576 1100

2801 TOWNSGATE ROAD, SUITE 215 • WESTLAKE VILLAGE, CA 91361 • TEL 805 497 9474 • FAX 805 497 8804
 3757911

www.wbocounsel.com

Daniel G. Shillito, Regional Solicitor
Judith Rabinowitz, Esq.
November 13, 2006
Page 2

correct? Does the BIA have any estimate of the number of documents missing from its records at this time?

Second, it is critical that POLY/POSY be kept completely apprised of the circumstances under which the materials referenced in the letter came to be missing from the BIA's records. We understand from the letter that the government speculates that original comment letters may have been inadvertently provided to the Tribe's counsel pursuant to 25 C.F.R. § 151.10, and the BIA appears not to have kept any copies. We will need more detail concerning the circumstances surrounding these missing materials. In addition, we will need to be apprised of the means by which the BIA can assure us that all missing materials have been returned, unaltered and complete.

Finally, given the continued irregularities with the Administrative Record, POLO/POSY will need to be informed as to the process by which the BIA is now reconstructing the Record and how it is going about determining what will be presented to the IBIA. Mr. Shillito's letter indicates that the BIA is going to review these documents and determine their relevance to this appeal. This is inconsistent with the government's prior representations that it would present the entire documentary record regarding the Tribe's 6.9 acre parcel land to trust application to the IBIA. Please confirm that the BIA intends to stand by its representations to the District Court and deem all of the missing materials relevant to the appeal, unless, of course, they relate solely to the Tribe's 1.8 acre land to trust application or some wholly ancillary matter to the 6.9 acre land to trust application and were not considered by the Regional Director of the Pacific Region in connection with the 6.9 acre fee to trust application.

Thank you in advance for your prompt attention to these matters.

Sincerely,



Lisa Gilford

WESTON, BENSHOOF,
ROCHFORD, RUBALCAVA & MacCUISH LLP

LG/chb
Enclosure



WESTON BENSHOOF
ROCHFORD RUBALCAVA MACCUISH LLP
ATTORNEYS AT LAW

Daniel G. Shillito, Regional Solicitor
Judith Rabinowitz, Esq.
November 13, 2006
Page 3

- cc: Vincent Armenta, Chairperson (with enclosure)
Santa Ynez Band of Mission Indians
P.O. Box 517
Santa Ynez, CA 93460
- cc: Terisa Draper, Realty Specialist (with enclosure)
Department of the Interior
Pacific Region
Bureau of Indian Affairs
650 Capital Mall, Suite 8-500
Sacramento, CA 95814
- cc: Brenda Tomaras (with enclosure)
Tomaras & Ogas
10755-F Scripps Poway Parkway
Suite 281
San Diego, CA 92131
- cc: Nancié Marzulla (with enclosure)
Marzulla & Marzulla
1350 Connecticut Avenue, NW
Suite 410
Washington, DC 20015



United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240

IN REPLY REFER TO:

MEMORANDUM

To: Regional Director, Pacific Region, Bureau of Indian Affairs

From: Thomas A. Blaser, Attorney-Advisor, Branch of Trust Responsibility, Division of Indian Affairs *TAB*

Date: November 30, 2006

Re: *Preservation of Los Olivos et al. v. Department of the Interior et al.*, No. CV-06-1502 AHM (CTx) and IBIA Docket No. 05-50-A

This memorandum is in response to your memorandum dated November 17, 2006, regarding the above-referenced appeal. You asked me to review approximately 1,300 pages of comment letters submitted to you by the Santa Ynez Band of Chumash Indians ("Band") and advise you on whether any of the letters should be included in the administrative record concerning the Band's application to place 6.9 acres in trust.

A few of the comment letters do relate to the Band's 6.9 acre land-into-trust application, and they were identified in your Notice of Decision on the application. However, your realty staff maintained copies of these comment letters and your staff has already included them with the supplemental record documents for filing with the IBIA. Based on my review of the remaining comment letters and after consultation with the Department of Justice, counsel for the Appellants, and counsel for the Band, I have determined that the remaining comment letters should not be included in the administrative record. They relate to a separate 1.8 acre land-into-trust application or a proposed casino expansion, or otherwise do not merit inclusion in the administrative record.

Counsel for the Band and Appellants have been informed about all of the foregoing and they consent to this approach for purposes of the BIA's filing of the supplemental record documents to the IBIA. However, they wish to review the comment letters that the Band submitted to you to determine whether they think any additional letters ought to be included in the administrative record. If the Band or Appellants think that any letters ought to be included, they will move the IBIA to accept them into the record. Therefore, please prepare copies of the comment letters that the Band submitted to you and transmit them to the following persons as soon as possible:

John M. Rochefort
Lisa Gilford
Weston, Benshoof, Rochefort,
Rubalcava & MacCuish, LLP
333 South Hope Street, 16th Floor
Los Angeles, CA 90071

(Attorneys for Preservation of Los Olivos &
Preservation of Santa Ynez)

Roger J. Marzulla
Nancie Marzulla
Marzulla & Marzulla
1350 Connecticut Avenue, N.W.
Suite 410
Washington, DC 20015

(Attorneys for Santa Ynez Band)

Thank you for your assistance. Please have your staff call me at 202-208-5811 if you have any questions.



IN REPLY REFER TO:

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Pacific Regional Office
2800 Cottage Way
Sacramento, California 95825

DEC 05 2006

DEC 11 2006

John M. Rochefort
Weston, Benshoof, Rochefort
Rubalcava & MacCuish, LLP
333 South Hope Street, 16th Floor
Los Angeles, CA 90071

Roger J. Marzulla
Marzulla & Marzulla
1350 Connecticut Avenue, N.W.
Suite 410
Washington, DC 20015

Dear Messrs. John M. Rochefort and Roger J. Marzulla:

Pursuant to a request made by Thomas A. Blaser, Attorney-Advisor, Division of Indian Affairs, we are transmitting copies of the comment letters submitted to our office by the Santa Ynez Band of Chumash Indians. This transmittal is made in reference to Case No. CV-06-1502 AHM (CTx) and IBIA Docket No. 05-50-A.

Sincerely,

Acting Regional Director

Enclosure

cc: Thomas A. Blaser w/out enclosure

TAKE PRIDE
IN AMERICA



EXHIBIT C



WESTON BENSHOOF
ROCHEFORT RUBALCAVA MACCUISH LLP
 ATTORNEYS AT LAW

(213) 576-1101
 rrochefort@wbccounsel.com

January 8, 2007

VIA FACSIMILE AND U.S. MAIL

Thomas A. Blaser, Esq.
 U.S. Department of the Interior
 Office of the Solicitor
 1849 C Street, N.W.
 #6513
 Washington, D.C. 20240

Re: Santa Ynez Concerned Citizens, et al. v. Pacific Regional Director,
 Bureau of Indian Affairs, IBIA Docket No. 05-50-A; Preservation of Los
 Olivos, et al. v. United States Department of Interior, et al.
 Case No CV-06-1502 (AHM)

Dear Mr. Blaser:

This letter confirms the request on behalf of our clients, Preservation of Santa Ynez (POSY) and Preservation of Los Olivos (POLO), that the documents transmitted, at your instance, to me and to Roger Marzulla by the Acting Regional Director of the Bureau of Indian Affairs, Pacific Regional Office on December 5, 2006, be included in the supplemental administrative record certified to the Interior Board of Indian Appeals in the above-entitled matter.

POSY and POLO respectfully submit that the foregoing documents bear directly on the standing issues before the IBIA in, at least, two important respects: (1) they generally demonstrate that the Regional Office of the Pacific Region of the Bureau of Indian Affairs (BIA) is in the practice of soliciting comments directly from the community members and groups such as POSY and POLO as well as comments from applicants in connection with fee-to-trust applications and (2) the BIA substantively considers such comments from the community and community groups in deciding such fee-to-trust applications and collaborates with the applicant in connection with managing public comment.

333 SOUTH HOPE STREET • SIXTEENTH FLOOR • LOS ANGELES, CA 90071 • TEL 213 576 1000 • FAX 213 576 1100

2801 TOWNSGATE ROAD, SUITE 215 • WESTLAKE VILLAGE, CA 91361 • TEL 805 497 9474 • FAX 805 497 8804

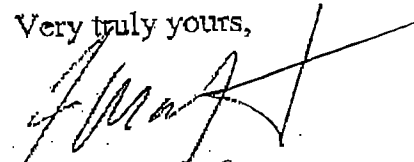
R03147.1

www.wbcounsel.com

Thomas A. Blaser, Esq.
January 8, 2007
Page 2

Thank you and we look forward to receiving your decision in connection with our request to include the foregoing documents within the supplemental record certified to the IBLA.

Very truly yours,



John M. Rochefort
WESTON, BENSHOOF,
ROCHEFORT, RUBALCAYA & MacCUISH LLP

JMR/mdy

cc: Nancie Marzulla, Esq. (Via fax and first class mail)
Brenda Tomaras, Esq. (Via fax and first class mail)



TOMARAS & OGAS, LLP

10755-F SCRIPPS POWAY PARKWAY #281 • SAN DIEGO, CALIFORNIA 92131
TELEPHONE (858) 554-0550 • FACSIMILE (858) 777-5765 • WWW.MTOWLAW.COM

Kathryn A. Ogas
Brenda L. Tomaras

kogas@mtowlaw.com
btomaras@mtowlaw.com

January 10, 2007

VIA FACSIMILE and U.S. MAIL

Thomas A. Blaser, Esq.
U.S. Department of the Interior
Office of the Solicitor
1849 C Street, N.W. #6513
Washington, D.C. 20240

Re: Santa Ynez Concerned Citizens, et al. v. Pacific Regional Director, Bureau of Indian Affairs, IBIA No. 05-50-A; Preservation of Los Olivos, et al. v. United States Department of Interior, et al., Case No. CV-06-1502 (AHM)

Dear Mr. Blaser:

This letter shall serve as the Santa Ynez Band of Chumash Mission Indians' ("Tribe") response to Mr. Rochefort's January 8, 2007 letter requesting that certain form comment letters pertaining to a separate fee-to-trust application be included in the supplemental record for the 6.9 acre matter. Please be advised that the Tribe opposes such an inclusion since it is the Tribe's understanding that such documents were not in fact considered by the Regional Director when making his decision regarding the 6.9 acre parcel, and therefore are not properly part of the administrative record. As we are all aware, proceedings under the APA are based upon the administrative record, which is comprised of those documents considered by an agency when making a determination or ruling. Should all documents submitted to the Bureau by either a particular tribe, or a third party concerning a particular tribe, regardless of the fact that such documents in no way pertain to the application or matter under consideration by the Board, be included in an administrative record, the Board would be faced with records that were completely unmanageable because of the reams of irrelevant documents included.

Further, the Tribe respectfully disagrees with the premise of Mr. Rochefort's assessment of why the documents are important. While the Bureau of Indian Affairs may not turn away comments submitted by the public pertaining to a particular fee-to-trust application, neither does it actively solicit such comments. The 151 regulations are clear -- it is the State and local governments who have a right to comment and whose comments are solicited by the Bureau.

Letter to Thomas Blaser
Re: POLO/POSY v. U.S. Department of Interior
Page 2

The Tribe of course defers to the Department's determination of what is properly in the record, but felt that some response to the Appellants' request was necessary. Thank you for your consideration.

Very Truly Yours,

TOMARAS & OGAS, LLP

A handwritten signature in cursive script that reads "Brenda L. Tomaras". The signature is written in dark ink and is positioned above the typed name.

Brenda L. Tomaras

cc via facsimile:

John "Mark" Rochefort, Esq.

Nancie Marzulla, Esq.

Jon Nuechterlein, Esq.

EXHIBIT D

CALIFORNIA INDIAN LEGAL SERVICES

609 South Escondido Boulevard
Escondido, CA 92025
Phone (760) 746-8941 ♦ Fax (760) 746-1815
www.calindian.org

Directing Attorney
Laura Y. Miranda

Senior Staff Attorney
Lawrence R. Stidham

Staff Attorneys

Lise J. Caroni
Deirdre M. Daly
Denise M. Douglas-Baird
Kathryn A. Ogas
Devon L. Reed
Brenda Tomaras
Joanne Willis Newton

May 14, 2002

Jim Haynes, Realty Specialist
Southern California Agency
Bureau of Indian Affairs
2038 Iowa Avenue, Suite 101
Riverside, CA 92507-0001

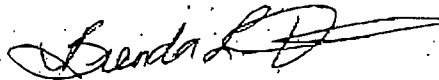
Re: Santa Ynez Fee-to-Trust Applications

Dear Mr. Haynes:

Thank you for forwarding the May 8, 2002 City of Buellton and May 7, 2002 County of Santa Barbara comment letters. As we discussed, these comment letters pertain to the Casino Expansion project on the current reservation and in no way related to any of the fee-to-trust applications. With respect to the EE for the Casino Expansion, the Tribe has already held a successful public hearing and has had at least one meeting with the County with regard to comments.

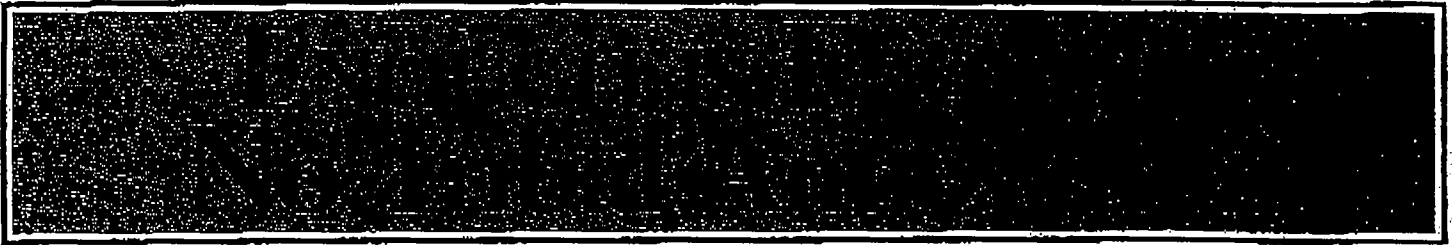
A letter addressing the comments received by the Bureau for the 6.9 Acre parcel will be forwarded from the Tribe shortly. If you have any further questions, please call me at (760) 746-8941, extension 122. Thank you for your time and consideration in this matter.

Sincerely,



Brenda L. Tomaras
Staff Attorney

EXHIBIT E



Citizens of the Santa Ynez Valley, here are the Facts:

1. The Santa Ynez Band of Mission Indians (The Tribe) has bought more land to annex to their reservation. They have bought in excess of 10 acres on the North and South sides of Highway 246 between The Reservation and Highway 154.
2. Applications for Annexation (Fee to Trust) have been submitted to the Bureau of Indian Affairs (BIA) for approval to increase the size of the Reservation.
3. Annexation will allow the Tribe to build anything without regard to impacts or inconvenience to the surrounding community. **YOUR COMMUNITY.**
4. Annexation gives the Tribe the right to develop land without following local or County Building Ordinances. Annexation will forever remove this land from any external guidelines and allow the Tribe to continue to develop oversized, out of character structures.
5. The Tribe has indicated their willingness to build their own waste treatment plant on the Reservation. This facility could threaten the water resources used by valley residents, and the citizens of Solvang.
6. The annexation of more land reduces County tax revenue used to pay for roads, schools, police, etc. The Tribe pays NO property taxes to the County and NO State Sales Taxes, but continues to use your County resources.
7. **EXERCISE YOUR PERSONAL RIGHTS BY SENDING THE LETTER BELOW THIS AD, OR WRITE YOUR OWN LETTER, TO THE BUREAU OF INDIAN AFFAIRS. DON'T DELAY, DO IT TODAY.**
8. **WE CAN MAKE A DIFFERENCE. THIS IS NOT A "DONE DEAL". ANOTHER COMMUNITY IN CALIFORNIA IS SUING THE BIA. WE CAN, TOO, WITH YOUR SUPPORT AND EFFORT.**
9. **DON'T GIVE IN TO THESE UNFAIR AND UNCHECKED ACTIONS THAT THREATEN YOUR PERSONAL RIGHTS AS CITIZENS.**
10. **WE MUST ACT NOW...YOU MUST ACT NOW...SAVE OUR VALLEY.**

Here is what you must do:

1. By August 1, 2002, you must send a letter to the Bureau of Indian Affairs expressing your opinions regarding the annexation of more land to the Reservation. The end of the public comment period is August 5, 2002.
2. Cut out the letter in this ad or write your own personal letter and send it to the Bureau of Indian Affairs. Send a copy of your letter or a copy of the letter in this ad to the people listed below.
3. If you want to write your own letter, please do so, but please, do it.
4. Without your input, the Bureau of Indian Affairs could grant the annexation of more land to the existing Reservation.
5. If you have an email facility, send copies of your letters to all public officials with email addresses. This is very effective. Let them hear from you, and express your opinions.
6. If a legal remedy to this problem is in the future, we will need your financial support. To those of you who have contributed in the past, we thank you. Some of you have been very generous. Your kindness is what has allowed us to keep everyone informed.

5. If you have an email facility, send copies of your letters to all public officials with email addresses. This is very effective. Let them hear from you, and express your opinions.
6. If a legal remedy to this problem is in the future, we will need your financial support. To those of you who have contributed in the past, we thank you. Some of you have been very generous. Your kindness is what has allowed us to keep everyone informed.
7. The Tribe has unlimited funds to advertise, sway public opinion in their direction and to contribute to various campaign funds that influence decisions regarding Indian Gaming, etc.
8. Nothing speaks as loudly as a personal letter to a government official expressing your feelings and exercising your rights.

July 4, 2002

Mr. Jim Haynes
Bureau of Indian Affairs
2038 Iowa Avenue, Suite 101
Riverside, California 92507

Subject: Application for Annexation of newly purchased land by The Santa Ynez Band of Mission Indians.

Dear Mr. Haynes:

I am a citizen of the Santa Ynez Valley located in the County of Santa Barbara. I am writing to request that you decline the May 29, 2002 application by the Santa Ynez Band of Mission Indians ("The Chumash") to annex 1.8 acres of newly acquired land to the Reservation. Like many of my neighbors I have been shocked, angered and dismayed by the unchecked development occurring on the Reservation. The recently announced casino expansion plans only serve to magnify the problem, create further negative impacts, and exemplify the unwillingness of the Tribal Leadership to work with the community and their neighbors.

While I support anyone's right to purchase, own and develop real property, I oppose removal of property from local jurisdiction and local tax rolls. It is blatantly unfair that the Tribe should purchase and develop land without regard to any local or county building ordinances. All other developers must live within the guidelines created to serve the common good. The tribe should not be given the right to ignore those ordinances that protect us all, and the resources of this Valley. We share this Valley; a community of extraordinary natural beauty, an unparalleled quality of life, and a population rich in the capacity to work together to a beneficial future. To date, the Tribal leadership has exhibited a non-cooperative and insensitive attitude, preferring to impose their vision upon the greater community. Their current development and planned expansion are oversized and out of character with the surrounding community. The significant, negative impacts posed by this development are staggering and the burdens placed upon the surrounding communities are unfair and breed discontent.

Until such time as the level of cooperation is improved, annexation at this time is not in the best interests of the community. I respectfully request that you deny their application for annexation.

Sincerely,

Your signature here

Your Printed Name here

Address

City State Zip Code

Hon. Diane Feinstein, United States Senate
Hon. Lois Capps, United States House of Representatives
Hon. Elton Gallegly, United States House of Representatives
Hon. Gale Norton, Secretary of the Department of the Interior
Hon. Gray Davis, Governor of California

Where to Send your Letters!

Mr. Jim Haynes
Bureau Of Indian Affairs
2038 Iowa Ave., Suite 101
Riverside, CA 92507

U.S. Senator Diane Feinstein
331 Hart Senate Office Building
Washington, D.C. 20510
email: senator@feinstein.senate.gov

U.S. Rep. Lois Capps
22nd Congressional District
1118 Longworth House Building
Washington, D.C. 20515

U.S. Rep. Elton Gallegly
23rd Congressional District
2441 Rayburn Building
Washington, D.C. 20515

Gale Norton, Interior Secretary
U. S. Department of the Interior
1849 C. Street N.W.
Washington, D.C. 20240
email: Gale.Norton@ios.doi.gov

Gov. Gray Davis
State Capitol
Sacramento, CA 95814
email: governor@governor.ca.gov

This Ad Paid For By The Santa Ynez Valley Concerned Citizens
Send contributions to: Post Office Box 244, Santa Ynez, California 93460

July 4, 2002

Mr. Jim Haynes
Bureau of Indian Affairs
2038 Iowa Avenue, Suite 101
Riverside, California 92507

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Until such time as the level of cooperation is improved, annexation at this time is not in the best interests of the community. I respectfully request that you deny their application for annexation.

Sincerely,


Your signature here:
Nancy Bates-Dingemans
Your Printed Name here

2645 Quail Valley Road
Address
Solvang CA 93463
City State Zip Code

cc:
Hon. Diane Feinstein, United States Senate
Hon. Lois Capps, United States House of Representatives
Hon. Elton Gallegly, United States House of Representatives
Hon. Gale Norton, Secretary of the Department of the Interior
Hon. Gray Davis, Governor of California

Where to Send your Letters!

Mr. Jim Haynes
Bureau Of Indian Affairs
2038 Iowa Ave., Suite 101
Riverside, CA 92507

U.S. Senator Diane Feinstein
331 Hart Senate Office Building
Washington, D.C. 20510
email: senator@feinstein.senate.gov

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22nd Congressional District
1118 Longworth House Building
Washington, D.C. 20515

U.S. Rep. Elton Gallegly
23rd Congressional District
2441 Rayburn Building
Washington, D.C. 20515

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Gov. Gray Davis
State Capitol
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