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FILED  
 CLERK, U.S. DISTRICT COURT,  
 JUL 27 2006  
 CENTRAL DISTRICT OF CALIFORNIA  
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 CENTRAL DISTRICT OF CALIFORNIA  
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12 UNITED STATES DISTRICT COURT  
 13 CENTRAL DISTRICT OF CALIFORNIA  
 14 WESTERN DIVISION

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

CASE NO. CV06-1502 AHM (CTx)

17 Plaintiffs,

18 **JOINT RULE 26(f) REPORT AND  
 19 STIPULATION AND PROPOSED  
 20 ORDER SETTING BRIEFING  
 21 SCHEDULE**

v.

22 THE UNITED STATES DEPARTMENT  
 23 OF THE INTERIOR; Secretary of the  
 Interior DIRK KEMPTHORNE, in his  
 official capacity; BUREAU OF INDIAN  
 AFFAIRS, by and through Pacific  
 Regional Director CLAY GREGORY, in  
 his official capacity; and the INTERIOR  
 BOARD OF INDIAN APPEALS,

DATE: July 31, 2006  
 TIME: 1:30 p.m.  
 PLACE: Courtroom of the  
 Honorable A. Howard Matz

24 Defendants,

25 SANTA YNEZ BAND OF MISSION  
 26 INDIANS,

27 Defendant-Intervenor.  
 28

DOCKETED ON CM  
 JUL 28 2006  
 BY [Signature] 003

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PAGE 003

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**JOINT RULE 26(f) REPORT**

1  
2 a. Plaintiffs Preservation of Los Olivos and Preservation of Santa Ynez  
3 (collectively, "Plaintiffs") seek review of the final decision of the Interior Board of  
4 Indian Appeals ("IBIA") dismissing their administrative appeal. In that appeal,  
5 Plaintiffs challenged the decision of the Bureau of Indian Affairs ("BIA") to take a  
6 6.9-acre property in Santa Barbara County, California, into trust on behalf of the Santa  
7 Ynez Band of Mission Indians. Plaintiffs claimed that they would suffer economic  
8 and environmental injury if the property were taken into trust and sought to argue to  
9 the IBIA that the trust acquisition was inconsistent with various statutory and  
10 regulatory provisions, including the Department of the Interior's regulations  
11 governing fee-to-trust acquisitions, 25 C.F.R. § 151.10, and the National  
12 Environmental Policy Act ("NEPA"), 42 U.S.C. §§ 4321-4370f.

13 The IBIA concluded that Plaintiffs lacked standing to pursue their  
14 administrative appeal because, according to the IBIA, Plaintiffs are not within the  
15 zone of interests of the statutory and regulatory provisions that govern the process  
16 through which the United States takes land into trust on behalf of Indian tribes.  
17 25 U.S.C. § 465; 25 C.F.R. § 151.10. The IBIA further concluded that Plaintiffs are  
18 not within NEPA's zone of interests because, according to the IBIA, Plaintiffs would  
19 suffer only economic – not environmental – injury from the trust acquisition and  
20 economic injuries are not cognizable under NEPA. The IBIA therefore dismissed  
21 Plaintiffs' appeal for lack of jurisdiction.

22 Plaintiffs claim that the IBIA's decision dismissing their administrative appeal  
23 was arbitrary, capricious, and not in accordance with law, in violation of the  
24 Administrative Procedure Act ("APA"), 5 U.S.C. § 706. Specifically, Plaintiffs allege  
25 that the IBIA's standing analysis misapplied the controlling legal framework set forth  
26 by the Supreme Court of the United States and that, when the Court's standing  
27 jurisprudence is properly applied, Plaintiffs satisfy the requirements of both Article III  
28 and prudential standing. Plaintiffs contend that this Court should therefore remand the

1 case to the IBIA for consideration of the merits of Plaintiffs' challenge to the BIA's  
2 approval of the trust acquisition. The Federal Defendants have agreed to stay  
3 acquisition of the 6.9 acres in trust status until a final decision on the merits is issued.

4 Defendants' and Defendant-Intervenor's position is that the IBIA's February 3,  
5 2006 decision properly dismissed Plaintiffs' appeal for lack of standing. Defendants  
6 and Defendant-Intervenor contend that the subject property, which is adjacent to the  
7 Tribe's reservation, contains a significant cultural and archeological site on which the  
8 Tribe plans to construct a public educational and cultural center.

#### 9 AFFIRMATIVE DEFENSES

- 10 1. Plaintiffs lack standing to bring the claims alleged in the Complaint.  
11 2. Plaintiffs have failed to state a claim for which relief may be granted.  
12 3. The Court lacks subject matter jurisdiction over this matter.  
13 b. The principal legal issues in this case include:

14 \* Whether the IBIA acted arbitrarily, capriciously, and not in accordance with  
15 law when it concluded that Plaintiffs' members had not established that they would  
16 suffer environmental injury from the 6.9-acre property being taken into trust.

17 \* Whether the IBIA acted arbitrarily, capriciously, and not in accordance with  
18 law when it concluded that Plaintiffs are not within the zone of interests of either  
19 NEPA or the statutory and regulatory provisions governing the fee-to-trust process.

20 \* Whether this Court should remand this case to the IBIA for a ruling on the  
21 merits of Plaintiffs' challenge to the BIA's approval of the 6.9-acre trust acquisition.

22 c. Plaintiffs are not seeking damages in this case, but wish to preserve their  
23 right to seek attorney's fees and costs, as appropriate.

24 d. N/A

25 e. It is possible that Plaintiffs will file a motion seeking leave to amend their  
26 complaint. It is unlikely that motions will be filed seeking to add other parties or  
27 claims or to transfer venue.

28

1 f. Plaintiffs do not currently anticipate engaging in discovery in this case,  
2 which seeks review of a final administrative decision. Plaintiffs nevertheless would  
3 like to preserve their right to seek discovery until they have had an opportunity to  
4 review the administrative record that the United States will be filing with this Court on  
5 or before August 28, 2006. Defendants' and Defendant-Intervenor's position is that  
6 discovery generally is inappropriate in an APA record review case such as this and,  
7 therefore, anticipate opposing any effort to conduct discovery or supplement the  
8 record.

9 g. The parties anticipate that the Court will be able to resolve all issues in  
10 this case on a motion for summary judgment, or through the disposition of some other  
11 dispositive motion.

12 h. No settlement discussions have thus far taken place among the parties.  
13 Pursuant to Local Rule 16-14.4, the parties select Settlement Procedure No. 1, which  
14 requires the parties to appear before the district judge for such settlement proceedings  
15 as the judge may conduct or direct.

16 i. The parties anticipate that this case, which seeks review of a final  
17 administrative decision, will be resolved through the Court's disposition of a  
18 dispositive motion and that the matter will not proceed to trial.

19 j. The parties have agreed to a stipulated briefing schedule for the  
20 dispositive motion in this case. That stipulated schedule is set forth below.

21 k. There are no other known issues affecting the status or management of  
22 the case.

23 l. Preservation of Los Olivos and Preservation of Santa Ynez have no  
24 subsidiaries, parents, or affiliates.

25 m. N/A

26 n. The parties do not wish to have a Magistrate Judge preside over this case.  
27  
28

**STIPULATION SETTING BRIEFING SCHEDULE**

1  
2 The parties, Plaintiffs Preservation of Los Olivos and Preservation of Santa  
3 Ynez (collectively, "Plaintiffs"), Defendants the United States Department of the  
4 Interior, Secretary of the Interior Dirk Kempthorne (in his official capacity), the  
5 Bureau of Indian Affairs by and through Pacific Regional Director Clay Gregory (in  
6 his official capacity), and the Interior Board of Indian Appeals (collectively,  
7 "Defendants"); and Defendant-Intervenor the Santa Ynez Band of Mission Indians  
8 (the "Tribe"), submit this stipulation setting forth a briefing schedule in this case.

9 Defendants agree to file the certified administrative record with this Court no  
10 later than August 28, 2006.

11 Depending upon whether Plaintiffs determine to file a Motion to Supplement  
12 the Record, and/or Motion to Conduct Discovery, and/or Motion to Amend the  
13 Complaint, one of two alternative briefing schedules will apply.

14 If Plaintiffs determine to file a Motion to Supplement the Administrative  
15 Record, Motion to Conduct Discovery, or Motion to Amend the Complaint, the parties  
16 stipulate that the following briefing schedule will apply:

17 September 25, 2006: Plaintiffs file their Motion to Supplement the  
18 Administrative Record and/or their Motion to Conduct Discovery and/or their Motion  
19 to Amend the Complaint.

20 October 16, 2006: Defendants and Defendant-Intervenor file their Response to  
21 Plaintiffs' Motion to Supplement the Administrative Record (and/or to any Motion to  
22 Conduct Discovery and/or any Motion to Amend the Complaint).

23 October 23, 2006: Plaintiffs file their Reply in Support of Motion to  
24 Supplement the Administrative Record (and/or in support of their Motion to Conduct  
25 Discovery and/or their Motion to Amend the Complaint).

26 After this Court issues a ruling on Plaintiffs' Motion to Supplement the  
27 Administrative Record (and/or on any Motion to Conduct Discovery and/or any  
28 Motion to Amend the Complaint), and after Defendants have complied with that

1 ruling and responded to the discovery (including complying with any orders on any  
2 motions to compel, if any) and/or answered any Amended Complaint, as applicable,  
3 Plaintiffs will have three weeks to file their dispositive motion for relief on the merits;  
4 Defendants and Defendant-Intervenor will then have four weeks to file their response  
5 and/or a cross-motion; Plaintiffs will then have three weeks to file a reply in support  
6 of their dispositive motion and/or a response to any cross-motion filed by Defendants  
7 and Defendant-Intervenor; if a cross-motion is filed, Defendants and Defendant-  
8 Intervenor will then have three weeks to file a reply in support of their cross-motion.

9 *Alternatively*, if Plaintiffs do not file a Motion to Supplement the  
10 Administrative Record, a Motion to Conduct Discovery, or a Motion to Amend the  
11 Complaint, the parties stipulate to the following briefing schedule:

12 October 10, 2006: Plaintiffs file their dispositive motion for relief on the  
13 merits.

14 November 6, 2006: Defendants and Defendant-Intervenor file their response  
15 and/or a cross-motion.

16 November 27, 2006: Plaintiffs file a reply in support of their dispositive  
17 motion and/or a response to any cross-motion filed by  
18 Defendants and Defendant-Intervenor.

19 December 18, 2006: If a cross-motion is filed, Defendants and Defendant-  
20 Intervenor file a reply in support of their cross-motion.

21  
22 DATED: July 24, 2006

23 THEODORE B. OLSON  
24 SCOTT A. EDELMAN  
25 AMIR C. TAYRANI  
26 GIBSON, DUNN & CRUTCHER LLP

27 By: 

28 Scott A. Edelman

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DATED: July 24, 2006

JUDITH RABINOWITZ  
UNITED STATES DEPARTMENT  
OF JUSTICE

By: Judith Rabinowitz (SR)  
Judith Rabinowitz

Attorney for FEDERAL DEFENDANTS

DATED: July 24, 2006

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Attorneys for Defendant-Intervenor  
SANTA YNEZ BAND OF MISSION  
INDIANS

**ORDER**

1  
2 Pursuant to the stipulation of the parties, and good cause appearing therefor, the  
3 Court sets the following briefing schedule in this case.

4 Defendants will file the certified administrative record with this Court no later  
5 than August 28, 2006.

6 Depending upon whether Plaintiffs determine to file a Motion to Supplement  
7 the Record, and/or Motion to Conduct Discovery, and/or Motion to Amend the  
8 Complaint, one of two alternative briefing schedules will apply.

9 If Plaintiffs determine to file a Motion to Supplement the Administrative  
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22 Administrative Record (and on any Motion to Conduct Discovery and/or any Motion  
23 to Amend the Complaint), and after Defendants have complied with that ruling and  
24 responded to the discovery (including complying with any orders on any motions to  
25 compel, if any) and/or answered any Amended Complaint, as applicable, Plaintiffs  
26 will have three weeks to file their dispositive motion for relief on the merits;  
27 Defendants and Defendant-Intervenor will then have four weeks to file their response  
28 and/or a cross-motion; Plaintiffs will then have three weeks to file a reply in support

1 of their dispositive motion and/or a response to any cross-motion filed by Defendants  
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 8 merits.

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 10 to Plaintiffs' motion and/or a cross-motion.


11 November 27, 2006: Plaintiffs file a reply in support of their dispositive  
 12 motion and/or a response to any cross-motion filed by  
 13 Defendants and Defendant-Intervenor.

14 December 18, 2006: If a cross-motion is filed, Defendants and Defendant-  
 15 Intervenor file a reply in support of their cross-motion.

16 COURT VACATES THE JULY 31, 2006 SCHEDULING CONFERENCE.

17 **IT IS SO ORDERED.**

18  
 19 DATED: July 25, 2006

20   
 The Honorable A. Howard Matz  
 United States District Court Judge

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