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**UNITED STATES DEPARTMENT OF THE INTERIOR  
OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS**

SANTA YNEZ CONCERNED CITIZENS, )  
PRESERVATION OF LOS OLIVOS, )  
PRESERVATION OF SANTA YNEZ, and )  
WOMENS'S ENVIRONMENTAL WATCH )  
OF THE SANTA YNEZ VALLEY, )

Appellants, )

v. )

Docket No. IBIA 05-50-A

PACIFIC REGIONAL DIRECTOR, )  
BUREAU OF INDIAN AFFAIRS, )

Appellee. )  
\_\_\_\_\_ )

**Response of the Santa Ynez Band of Chumash Mission Indians  
in Support of the Regional Director's Request to Limit Disclosure of the Remaining  
Confidential Archaeological Documents**

Real Party in Interest, the Santa Ynez Band of Chumash Mission Indians (Santa Ynez or Tribe), urges the Interior Board of Indian Appeals (IBIA or Board) to approve the Regional Director's request to limit disclosure of that confidential information regarding the archaeological studies performed on the property, which is the subject of the Tribe's fee-to-trust application, and which the ACHP has agreed should not be released to the parties.

**Procedural Background**

On November 30, 2006, the BIA provided the IBIA with the Supplemental Administrative Record and a 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 (herein after referred to as Pet. To File Supplemental R. Docs.). In the Response and Petition, the BIA requested, in accordance with 43 C.F.R. §4.31, that the IBIA limit disclosure of certain confidential information contained in two archaeological reports and some related correspondence pursuant to Section 304 of the National Historic Preservation Act ("NHPA"), 16 U.S.C. § 470w-3, and the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 *et seq.*. Pet. To File Supplemental R. Docs. at 6. On December 11, 2006, the Board issued an Order allowing the Appellants and Tribe to respond to the Regional Director's Request to limit disclosure of confidential information. Order Accepting Joint Report and Granting Motion for Enlargement of Time. In the interceding time, the Department followed the necessary procedures under Section 304 of the NHPA and completed the consultation with the Advisory Council on Historic Preservation. It is the Tribe's understanding that the ACHP determined that two of the letters and one of the

archaeological reports could be released to the parties in redacted form. The Department has now provided those documents to the parties, but there remain additional archaeological documents which the Department is requesting be withheld on the basis of confidentiality.

## **Argument**

### **I. Statutory Authority Supports the Regional Director's Request**

As the Department noted in its briefing, the archaeological documents squarely fit into the statutory exemption set forth in FOIA because the NHPA requires that information concerning the nature and location of archaeological resources be kept confidential. *Id.* at 6-8.

FOIA exemption (b)(3) prevents disclosure of matters that are specifically exempted from disclosure by statute, so long as the statute requires withholding the material in a manner which leaves no discretion on the issue and establishes criteria for withholding such materials. 5 U.S.C. §552(b)(3). NHPA exempts from disclosure materials which relate to the nature and location of archaeological resources and leaves no discretion as to whether such archaeological materials may be disclosed. 16 U.S.C. §470w-3. Further, it provides specific criteria as to what information must be withheld. *Id.*

As the Department has set forth in its briefing, the archaeological reports meet the criteria under NHPA since the resources have been deemed eligible for inclusion in the National Register as determined by the BIA Regional Archaeologist and the California SHPO. Pet. To File Supplemental R. Docs. at 7-8. Any disclosure of information to the general public concerning the specific nature and location of archaeological resources risks harm to the resources, as it allows for possible destruction or desecration of the site. Thus, the archaeological reports clearly fall within the exemption provided for within NHPA.

## **II. Information Contained Within the Reports is Not Relevant to Appellants' Claims of Standing**

Any information concerning the specifics of the archaeological sites contained within the remaining confidential reports has no relevancy to Appellants' claims of standing. As the Board is aware, none of the Tribe's opponents, including these Appellants, objected to the fee-to-trust application on archeological grounds. Indeed, no objection would have made sense unless Appellants had some perverse reason to oppose the preservation of the site's archeological features (as opposed to the decision to take the site into trust). Appellants likewise did not raise any objections relating to the architectural report, which merely assessed the historic status of a residence that was on the property when the Tribe purchased it.<sup>1</sup> In all events, these documents could have no conceivable bearing on the Board's rationale for denying Appellants' standing. Thus, the Tribe strongly supports the Regional Director's request to maintain the confidentiality of these reports and respectfully request the Board to do so.

### **Conclusion**

For all of these reasons, the Board should approve the Regional Director's Request to Limit Disclosure of Confidential Information.

Respectfully submitted,

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<sup>1</sup> A historic property assessment under Section 106 was conducted and the building was considered not to be a historic property.

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February 1, 2007

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