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25 IN THE UNITED STATES DISTRICT COURT  
26 FOR THE CENTRAL DISTRICT OF CALIFORNIA

27 PRESERVATION OF LOS OLIVOS  
28 and PRESERVATION OF SANTA  
YNEZ,

Plaintiffs,

vs.

THE UNITED STATES DEPT. OF  
THE INTERIOR, et al.,

Defendants.

Case No.: CV-06-1502

**NOTICE OF AND MOTION TO  
INTERVENE OF THE SANTA  
YNEZ BAND OF MISSION  
INDIANS**

Date: May 15, 2006

Time: 10:00 am

Hon. A. Howard Matz

1 PLEASE TAKE NOTICE that on May 8, 2006, at 10:00 a.m., or as soon  
2 thereafter as the matter may be heard, a hearing will be held before the Honorable  
3 A. Howard Matz, United States District Judge, in the United States Courthouse  
4 located at 312 N. Spring Street, Los Angeles, California, on the Motion by the  
5 Santa Ynez Band of Mission Indians to intervene in the above-captioned matter.

6 Pursuant to Rule 24 of the Federal Rules of Civil Procedure, the Santa Ynez  
7 Band of Mission Indians (Chumash or Tribe) respectfully moves to intervene in  
8 this action to defend against all allegations raised in the Complaint filed by  
9 Plaintiffs on March 10, 2006. Counsel for the Tribe has conferred with counsel for  
10 Plaintiffs and counsel for Defendants. The United States opposes intervention  
11 under Rule 24(a)(2) but consents to the Tribe's intervention under Rule 24(b)(2).  
12 Plaintiffs, as of the filing of this motion, are unable to take a position with regard  
13 to the Tribe's intervention.

14 Attached hereto are a factual declaration, a memorandum of points and  
15 authorities in support of this motion, and a proposed answer on behalf of the Tribe  
16 as required by Rule 24(c). The grounds for this motion, as set forth more fully in  
17 the accompanying memorandum, are as follows:

18 1. The Tribe is a federally recognized Indian tribe. Plaintiffs' Complaint  
19 challenges a decision by defendant the Secretary of the Interior to take into trust  
20 for the Tribe, a Tribe-owned 6.9-acre parcel of real property in Santa Barbara  
21 County, California, pursuant to 25 U.S.C. § 465 and 25 C.F.R. §§ 151.3, 151.10.

22 2. Federal Rule of Civil Procedure 24(a)(2) provides that upon timely  
23 application anyone shall be permitted to intervene in an action "when the applicant  
24 claims an interest relating to the property or transaction which is the subject of the  
25 action and the applicant is so situated that the disposition of the action may as a  
26 practical matter impair or impede the applicant's ability to protect that interest,  
27 unless the applicant's interest is adequately represented by existing parties."  
28

1           3.     Federal Rule of Civil Procedure 24(b)(2) provides that, upon timely  
2 application anyone may be permitted to intervene in an action “when an  
3 applicant’s claim or defense and the main action have a question of law or fact in  
4 common.” In exercising its discretion under this subpart, “the court shall consider  
5 whether the intervention will unduly delay or prejudice the adjudication of the  
6 rights of the original parties.” *Id.*

7           4.     The Tribe has a concrete and immediate stake in the outcome of this  
8 litigation, which would be injured by a decision granting relief to Plaintiffs, and  
9 accordingly wishes to intervene and defend against all allegations raised in  
10 Plaintiffs’ Complaint.

11          5.     This motion to intervene is timely, as the Complaint in this case was  
12 filed on March 10, 2006, less than three weeks from today’s date.

13          6.     The Tribe has a significant interest in the real property at issue, which  
14 the tribe currently owns in fee status, and which is adjacent to the Tribe’s current  
15 reservation. As the direct beneficiary of the Secretary of Interior’s decision to  
16 transfer the parcel into trust status, the Tribe also has a significant interest in  
17 defending the Secretary’s decision to take this land into trust on its behalf. Finally,  
18 the Tribe has a cognizable interest in the fee-to-trust transfer at issue in this case.  
19 That transfer will allow the Tribe to exercise sovereign authority over the subject  
20 land; to preserve the significant archaeological and cultural site harboring the  
21 remains of an ancient, intact Chumash burial ground and village located on the  
22 property; and to develop a commemorative park, museum, and cultural center.

23          7.     The disposition of this litigation may, as a practical matter, impair or  
24 impede the Tribe’s ability to protect these direct and significant interests.

25          8.     The Tribe’s interests cannot be fully and adequately represented by  
26 the existing parties, including the United States.

27          9.     Accordingly, the requirements for intervention as of right under  
28 Federal Rule of Civil Procedure 24(a)(2) are satisfied.



1 CERTIFICATE OF SERVICE

2 The undersigned certifies that on this 6th day of April, 2006, a true and correct copy of  
3 the below-listed documents was sent by placing the same in the United States mail, postage  
4 prepaid, and properly addressed to:

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21 300 North Los Angeles Street  
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24 Documents served:

- 25 1. Motion to Intervene of The Santa Ynez Band of Mission Indians  
26 2. Memorandum in Support of the Santa Ynez Band of Mission Indians'  
27 Motion for Intervention  
28 3. Declaration of Vincent Armenta in Support of the Santa Ynez Band of  
Mission Indians' Motion to Intervene  
4. Answer and Affirmative Defenses of Defendant-Intervenor Santa Ynez  
Band of Mission Indians  
5. Defendant-Intervenor's Certification of Interested Parties

  
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Case No.: CV-06-1502

**MEMORANDUM IN SUPPORT OF  
THE SANTA YNEZ  
BAND OF MISSION INDIANS'  
MOTION FOR INTERVENTION**

Date: May 15, 2006

Time: 10:00 am

A. Howard Matz

**TABLE OF CONTENTS**

1

2

3 TABLE OF AUTHORITIES ..... ii

4 INTRODUCTION ..... 1

5

6 STATEMENT OF FACTS ..... 2

7 ARGUMENT ..... 5

8

9 I. Intervention Should Be Granted As of Right ..... 5

10 A. This Motion to Intervene Is Timely ..... 6

11 B. The Tribe Has an Interest Relating to the Property or

12 Transaction Which Is the Subject of This Action ..... 7

13 C. An Adverse Decision Would Impair the Tribe’s Ability

14 to Protect Its Interests ..... 9

15 D. The United States May Not Adequately Protect the

16 Tribe’s Interests in This Suit ..... 9

17

18 II. The Tribe Also Qualifies for Permissive Intervention ..... 11

19 CONCLUSION ..... 12

20

21

22

23

24

25

26

27

28

1 **TABLE OF AUTHORITIES**

2 **Cases**

3 *California v. Tahoe Reg'l Planning Agency*, 792 F.2d 775,  
4 (9th Cir.1986)..... 10

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6 (D.D.C. 1980) ..... 1

7 *Diamond v. District of Columbia*, 792 F.2d 179, (D.C. Cir. 1986)..... 10

8

9 *Florida Dep't of Bus Regulation v. United States Dep't of Interior*,  
10 768 F.2d 1248, (11th Cir. 1985) ..... 1

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12 66F.3d 1489, (9th Cir. 1995) ..... 6, 7, 9, 10

13 *Kleissler v. Forest Serv.*, 157 F.3d 964, (3d Cir. 1988) ..... 7, 10

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15

16 *League of United Latin Am. Citizens v. Wilson*, 131 F.3d 1297,  
17 (9th Cir. 1997)..... 6

18 *Massachusetts School of Law at Andover, Inc. V. United States*, 118 F.3d  
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20 *Mille Lacs Band of Chippewa Indians v. Minnesota*, 989 F.2d 994,  
21 (8th Cir. 1993)..... 11

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23 at \*7(E.D. Cal. 2006)..... 6

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25

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28 *Santa Ynez Valley Concerned Citizens v. Pacific Regional Director*,  
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1 *Sierra Club v. Espy*, 18 F.3d 1202, (5th Cir. 1994)..... 10

2

3 *Southwest Cir. For Biological Diversity v. Berg*, 268 F.3d 810,

4 (9th Cir. 2001).....6

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6 *Wilderness Society v. Babbitt*, 104 F.Supp.2d 10, 12n.12, 18 (D.D.C. 2000) ..7, 8

7

8 **Federal Regulations**

9 25 C.F.R. §151.10(h)..... 4

10 **Federal Rules**

11 Federal Rule of Civil Procedure 24(a).....9

12 Federal Rule of Civil Procedure 24(b) (2)..... 11

13 **Miscellaneous**

14 Notice of Finding of No Significant Impact (FONSI) for the Proposed

15 Santa Ynez Band of Chumash Indians 6.9- Acre Fee-to-Trust Acquisition,

16 Sept. 22, 2004 ..... 4

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19 § 1909 ..... 10, 11

20 Padraic I. McCoy, *The Land Must Hold the People: Native Modes of*

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1           On March 10, 2006, two citizens' groups—the Preservation of Los Olivos  
2 (POLO) and Preservation of Santa Ynez (POLY) (collectively, Plaintiffs)—filed  
3 this suit seeking judicial review of a decision of the Interior Board of Indian  
4 Appeals (IBIA). *Santa Ynez Valley Concerned Citizens v. Pacific Regional*  
5 *Director*, 42 IBIA 189 (2006). The IBIA held that Plaintiffs lacked standing to  
6 challenge an administrative decision to approve the application of the Santa Ynez  
7 Band of Mission Indians (Chumash or Tribe) to transfer a 6.9-acre parcel of  
8 Tribally owned land into federal trust under 25 U.S.C. § 465. The fee-to-trust  
9 transfer will allow the Tribe to exercise sovereign control over the 6.9 acres, land  
10 on which the Tribe plans to permanently preserve an ancient Chumash burial site  
11 and remains of an intact Chumash village site; develop an educational museum and  
12 cultural facility dedicated to telling the story of the Chumash people; create an  
13 open community commemorative park; and build a small professional office and  
14 retail facility to provide funding to maintain and operate the museum and cultural  
15 facilities.

16           Pursuant to Rule 24 of the Federal Rules of Civil Procedure, the Tribe  
17 respectfully moves to intervene as a defendant—as of right or, in the alternative,  
18 permissively—to promote its substantial interest in developing, and in exercising  
19 sovereign authority over, the 6.9-acre parcel at issue. The United States opposes  
20 intervention under Rule 24(a)(2) but consents to the Tribe's intervention under  
21 Rule 24(b)(2). Plaintiffs, as of the filing of this motion, are unable to take a  
22 position with regard to the Tribe's intervention. Courts routinely allow Indian  
23 tribes to intervene in suits challenging the federal government's decision to accept  
24 a parcel of land into trust under 25 U.S.C. § 465. *See, e.g., Florida Dep't of Bus.*  
25 *Regulation v. United States Dep't of Interior*, 768 F.2d 1248, 1250 (11th Cir.  
26 1985); *Roseville v. Norton*, 219 F. Supp. 2d 130, 137 (D.D.C. 2002); *City of Sault*  
27 *Ste. Marie, Michigan v. Andrus*, 532 F. Supp. 157, 159-60 (D.D.C. 1980). This  
28 Court should do likewise for the reasons discussed below.

1 **Statement of Facts**

2 Title 25 U.S.C. § 465 authorizes the Secretary of the Interior to acquire,  
3 through relinquishment or assignment, any interest in lands “for the purpose of  
4 providing land for Indians.” Under that provision, land “shall be taken in the name  
5 of the United States in trust for the Indian tribe or individual Indian for which the  
6 land is acquired, and such lands or rights shall be exempt from State and local  
7 taxation” and subject to the tribe’s sovereign authority.

8 The Santa Ynez Band of Mission Indians became federally recognized in  
9 1901. It is the only federally recognized Chumash tribe in the nation. The  
10 Chumash Indians once numbered in the tens of thousands and lived along the coast  
11 of California. Their territory encompassed 7,000 square miles that spanned from  
12 the beaches of Malibu to Paso Robles (including the four Northern Channel  
13 Islands). The Chumash also inhabited inland to the western edge of the San  
14 Joaquin Valley. Today, the Tribe consists of only 158 members, and the Santa  
15 Ynez Indian Reservation, located in Santa Barbara County, occupies only 138.95  
16 acres, most of which lie in a flood plain and are unsuitable for development  
17 because of flooding and drainage problems.<sup>1</sup> 42 IBIA at 190. On November 8,  
18 2000, the Tribe filed an application under section 465 with the Bureau of Indian  
19 Affairs (BIA) to convert a 6.9-acre parcel of land adjacent to the Tribe’s current  
20 reservation—a parcel the Tribe currently owns in fee—into federal trust status.  
21 After this initial filing, the Tribe discovered an ancient Chumash burial site and an  
22 intact Chumash village site on the 6.9-acre parcel. Accordingly, on May 6, 2002,

23 \_\_\_\_\_  
24 <sup>1</sup> The irregular topography and flood hazards associated with the multiple creek  
25 corridors that run throughout the reservation severely limit efficient and productive  
26 development of the reservation land. Of the roughly fifty developable acres of  
27 reservation land that is already held in trust, most is already in use. The northern  
28 portion is devoted to residential housing. Decl. ¶ 4. The remaining land on the  
*Id.* at ¶ 5. Thus, in order for the Tribe to grow as a sovereign nation, the Tribe  
submitted the fee-to-trust application at issue in this case. *Id.* at ¶ 6.

1 the Tribe filed a revised application to take account of this significant  
2 archaeological find.

3 The Tribe's revised application explained that placing the parcel into trust is  
4 necessary to allow the Tribe to consolidate its land holdings for the purpose of self-  
5 determination and to protect irreplaceable historical and cultural artifacts, and the  
6 Tribe's strong commitment to promoting self-reliance and pride in Native  
7 Americans by honoring Chumash traditions and culture. Specifically, the Tribe  
8 explained that it would exercise its sovereign rights over the parcel to preserve the  
9 ancient burial ground and Chumash village site as well as construct and maintain:  
10 (1) an educational museum and cultural center dedicated to the Chumash people;<sup>2</sup>  
11 (2) a 3.5-acre permanent commemorative park, to be open to the public;<sup>3</sup> and (3) a  
12 two-story retail facility to be used for professional office space and small retail  
13 shops, to generate revenue to pay for the upkeep and maintenance of the cultural

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14  
15 <sup>2</sup> The Tribe plans to construct an approximately 14,350 square foot museum and  
16 cultural center. The museum and cultural center will contain administration offices,  
17 copy centers, reception, and curator's office, instructional space with classrooms,  
18 and a conference center. The Tribe also plans to create permanent exhibit space in  
19 the center with interactive exhibits and a gallery; the center will also contain a  
20 theater, café, and gift shop. Decl. ¶¶ 7-9.

21 <sup>3</sup> The Tribe plans to develop a 3.5-acre public park as an integral component of the  
22 museum and cultural center. The park will be located to the west of the proposed  
23 museum and cultural center visible from the exhibit halls, the outdoor terrace, and  
24 from Highway 246. The park will be permanently set aside to commemorate the  
25 Chumash Indians who once inhabited and traversed the hills and valleys of Santa  
26 Barbara County. The park will also be open to the public and for the use and  
27 enjoyment of the surrounding community. Fill material will be brought in to create  
28 the feeling of an enclosed meadow area and to create a natural sound barrier from  
traffic noise from Highway 246. This area will also contain interpretive exhibits  
focusing on the history of the Chumash people. A narrow bridge will be  
constructed over the park area to connect the museum and cultural center to the  
open meadow. The arrival area of the bridge will have a scaled replica of Santa  
Cruz Island. The bridge will cross an oval-shaped decorative pond approximately  
50 feet wide by 100 feet long, and three feet deep. Decl. ¶ 9.

1 center, museum, and park. 42 IBIA at 190-91, 200; Decl. ¶ 7. The Tribe's filings  
2 further explained that all buildings, to the extent feasible, will be constructed out of  
3 natural materials, such as wood, stucco, and stone, and that the Tribe had attempted  
4 to design buildings that will blend in with the surrounding environment. 42 IBIA at  
5 200.

6 Because action to take land into trust implicates the National Environmental  
7 Policy Act (NEPA), 42 U.S.C. §§ 4321-4347, an Environmental Assessment (EA)  
8 was prepared for the project. *See* 25 C.F.R. § 151.10(h). Following the  
9 completion of a Phase I Contaminant Survey, which showed that there were no  
10 hazardous substances on the property, the NEPA process was successfully  
11 completed on September 22, 2004, with the issuance of a Finding of No Significant  
12 Impact by the Bureau of Indian Affairs. *See* Notice of Finding of No Significant  
13 Impact (FONSI) for the Proposed Santa Ynez Band of Chumash Indians 6.9-Acre  
14 Fee-to-Trust Acquisition, Sept. 22, 2004.

15 On January 14, 2005, the BIA's Pacific Regional Director (Regional  
16 Director) approved the Tribe's fee-to-trust application pursuant to 25 C.F.R.  
17 §151.10, concluding that the decision to take the parcel into trust would allow the  
18 Tribe to execute its development goals and permit the Tribe to exercise the  
19 ultimate authority on the treatment and disposition of the land's archeological  
20 resources. 42 IBIA at 191. The BIA also determined that removal of the property  
21 from the Santa Barbara County tax rolls would not adversely affect the County,  
22 and that the Tribe's development plan was consistent with the land's zoning status  
23 (commercial highway) and existing traffic patterns. *Id.*

24 On February 22, 2005, Plaintiffs appealed the Regional Director's decision  
25 to the IBIA.<sup>4</sup> On February 8, 2006, the IBIA dismissed Plaintiffs' appeal for lack  
26 of standing. Plaintiffs subsequently filed this action challenging IBIA's decision  
27

---

28 <sup>4</sup> In addition to the Plaintiffs in this case, several other appellants participated in  
the IBIA appeal. Compl. Ex. A.

1 that they lack standing. Specifically, Plaintiffs ask the Court to: (1) “reverse the  
2 IBIA Order holding that Plaintiffs do not have standing to appeal the BIA Decision  
3 taking the Property into trust,” and (2) “enjoin the enforcement of the BIA  
4 Decision pending consideration of the merits of Plaintiffs’ administrative appeal.”  
5 Compl. ¶ 3. Plaintiffs initially sought a preliminary injunction. We understand  
6 that, to avoid litigation on the preliminary injunction motion, the United States  
7 notified Plaintiffs that it would voluntarily refrain from taking the parcel into trust  
8 until after a decision on the merits.

9 The Tribe now moves for intervention as of right under Federal Rule of Civil  
10 Procedure 24(a)(2) to defend the legality of the decision to take the 6.9-acre parcel  
11 into trust and to oppose any further delay in a process that has already taken years.  
12 Although the United States will no doubt vigorously defend the legality of its  
13 actions, the Tribe will bring to this litigation its own, uniquely interested  
14 perspective on the matters at issue, including the need to avoid further delay in  
15 bringing this land into trust. For the same reasons, the Tribe, in the alternative,  
16 moves to permissively intervene under Federal Rule of Civil Procedure 24(b)(2).

### 17 **Argument**

18 This lawsuit threatens the Tribe’s sovereign interests as well as its authority  
19 to develop the 6.9-acre parcel in the interests of its members. The Tribe readily  
20 satisfies the criteria for intervention as of right under Rule 24(a) and for permissive  
21 intervention under Rule 24(b).

#### 22 **I. Intervention Should Be Granted As of Right.**

23 Rule 24(a)(2) provides that anyone, upon timely application, “shall be  
24 permitted to intervene in an action . . . when the applicant claims an interest  
25 relating to the property or transaction which is the subject of the action and the  
26 applicant is so situated that the disposition of the action may as a practical matter  
27 impair or impede the applicant’s ability to protect that interest, unless the  
28 applicant’s interest is adequately represented by existing parties.” This rule should

1 in general be construed “liberally in favor of potential intervenors,” *Southwest Ctr.*  
2 *for Biological Diversity v. Berg*, 268 F.3d 810, 818 (9th Cir. 2001), because a  
3 “liberal policy in favor of intervention serves both efficient resolution of issues and  
4 broadened access to the courts.” *Forest Conservation Council v. United States*  
5 *Forest Serv.*, 66 F.3d 1489, 1496 n.8 (9th Cir. 1995).

6 Under Ninth Circuit precedent, a party seeking intervention as of right must  
7 satisfy the following factors: (1) the intervention motion must be timely; (2) the  
8 applicant must claim an interest relating to the property or transaction which is the  
9 subject of the action; (3) the applicant must be situated such that the disposition of  
10 the action may, as a practical matter, impair or impede the applicant’s ability to  
11 protect its interest; and (4) the applicant’s interest must not be adequately  
12 represented by existing parties to the action. *League of United Latin Am. Citizens*  
13 *v. Wilson*, 131 F.3d 1297, 1302 (9th Cir. 1997). Here, the Tribe easily satisfies  
14 each of these factors.

15 **A. This Motion to Intervene Is Timely.**

16 In assessing timeliness, this Court must consider: (1) the current stage of the  
17 proceedings; (2) whether the existing parties would be prejudiced; and (3) the  
18 reason for any delay in moving to intervene. *League of United Latin Am. Citizens*,  
19 131 F.3d at 1302. Because the Complaint in this matter was filed on March 10,  
20 2006, and no activity has occurred in the case, the Tribe’s motion is  
21 unquestionably timely. *See, e.g., Natural Res. Def. Council v. Norton*, -- F. Supp.  
22 2d --, 2006 WL 39094, at \*7 (E.D. Cal. 2006) (concluding that the intervenor’s  
23 motion to intervene was timely when the complaint was filed in February and the  
24 motion to intervene was filed in March).

1           **B.     The Tribe Has an Interest Relating to the Property or**  
2           **Transaction Which Is the Subject of This Action.**

3           To demonstrate a “significantly protectable interest,” a would-be intervenor  
4 “must establish that (1) the interest asserted is protectable under some law, and (2)  
5 there is a relationship between the legally protected interest and the claims at  
6 issue.” *Northwest Forest Res. Council v. Glickman*, 82 F.3d 825, 837 (9th Cir.  
7 1996). A prospective intervenor has a sufficient interest when “rights of the  
8 applicant may be affected by a proposed remedy.” *Forest Conservation Council*,  
9 66 F.3d at 1495. In other words, “when . . . the injunctive relief sought by  
10 plaintiffs will have direct, immediate, and harmful effects upon a third party’s  
11 legally protectable interests, that party satisfies the ‘interest’ test of Fed. R. Civ. P.  
12 24(a)(2).” *Id.* at 1494.

13           The Tribe easily satisfies these standards. First, the Tribe’s undisputed  
14 ownership of the land at issue gives it a direct, protectable, and cognizable interest  
15 in this dispute. *See, e.g., Sanguine, Ltd. v. Dep’t of Interior*, 736 F.2d 1416 (10th  
16 Cir. 1984) (holding that tribal members who owned oil and gas producing lands  
17 had sufficient interest to intervene in suit between oil-and-gas lessor and the  
18 federal government). Second, the Tribe is the direct beneficiary of the IBIA’s  
19 decision to transfer the parcel into trust status, and Plaintiffs attack the IBIA’s  
20 ultimate decision as well as the IBIA’s decision-making process. *See Compl.*  
21 ¶¶ 27-28. The Tribe has a significant interest in defending the propriety and  
22 legality of the IBIA’s ultimate decision, as well as the process — including the  
23 NEPA process (in which the Tribe was involved, *see Compl.* ¶ 15) — through  
24 which that decision was reached. The Tribe’s interest in defending the IBIA’s  
25 determination is itself sufficient to support intervention. *See, e.g., Kleissler v.*  
26 *Forest Serv.*, 157 F.3d 964, 969-73 (3d Cir. 1988) (holding that local governments  
27 and private interests that benefited directly from a Forest Service decision had right  
28 to intervene to support decision against a NEPA challenge); *Wilderness Society v.*

1 *Babbitt*, 104 F.Supp.2d 10, 12 n.12, 18 (D.D.C. 2000) (holding that local  
2 corporation whose members' "cash economy is based almost exclusively on oil  
3 and gas" was entitled to intervene to support oil and gas development plan against  
4 a NEPA challenge). In addition, most of the Tribe's members live on the adjacent  
5 reservation or nearby, *see* Decl. ¶ 11, and consequently have strong interests of  
6 their own in the NEPA-related portions of this action.

7 Third, this lawsuit seeks to overturn the IBIA's decision to take the 6.9-acre  
8 parcel into trust, and that request has far-reaching implications for the Tribe. *See*  
9 *id.* The parcel is an infinitesimal speck of the Tribe's historic lands, but it  
10 nevertheless holds great symbolic value. Tribal lands serve cultural, spiritual, and  
11 educational purposes, and tribal sovereignty gives members self-determination and  
12 the right to chart the lands' future development. This is especially true here, given  
13 that the parcel has particular historic significance as the site of an ancient Chumash  
14 burial site and village, the archaeological remains of which have yet to be studied.  
15 *Id.*; *see generally* Padraic I. McCoy, *The Land Must Hold the People: Native*  
16 *Modes of Territoriality and Contemporary Tribal Justifications for Placing Land*  
17 *Into Trust Through 25 C.F.R. Part 151*, 27 AM. INDIAN L. REV. 421, 444 (2003).<sup>5</sup>  
18 In sum, the Tribe has three clear, cognizable, and protected interests, which will all  
19 be directly affected by the Court's resolution of this action.

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21  
22 <sup>5</sup> The article notes that the tribal reservation is often considered to be the single  
23 most important economic resource of any Indian tribe. Tribal lands also comprise  
24 the heart of the non-economic resources of a tribe, by serving cultural, spiritual, or  
25 educational purposes, among others. This invaluable tribal resource is strengthened  
26 and protected by placing newly acquired fee lands into trust with the United States.  
27 Once the lands are placed under the jurisdiction of the Federal and tribal  
28 governments, the right to govern the lands becomes predominant. This is important  
as the inherent right to govern its own lands is one of the most essential powers of  
any tribal government. As with any government the Tribe must be able to  
determine its own course in addressing the needs of its government and its  
members. Land in trust status is crucial to this ability.

1           **C.     An Adverse Decision Would Impair the Tribe’s Ability to Protect**  
2           **Its Interests.**

3           To intervene as of right under Rule 24(a)(2), the Tribe must be “so situated  
4 that the disposition of th[is] action may as a practical matter impair or impede [its]  
5 ability to protect [its] interest[s].” Fed. R. Civ. P. 24(a). That condition is  
6 obviously met here.

7           Plaintiffs seek to reverse the IBIA’s final decision to take that land into trust.  
8 *See* Compl. ¶ 14. The very purpose of this action is to prevent the Tribe from  
9 promoting its interests by annexing the 6.9-acre parcel to its reservation and  
10 administering it as its sovereign land. Compl. ¶ 31 (“The relief sought by Plaintiffs  
11 will prevent the Property from being taken into trust, and thus being removed from  
12 the jurisdiction of state and local government.”) Moreover, any judgment vacating  
13 the IBIA’s decision—and any litigation that delays its implementation—will  
14 directly harm the Tribe and its members. The Tribe has spent decades fighting to  
15 restore its government-to-government relationship with the United States and to  
16 regain a small portion of the vast aboriginal lands it has lost. The Tribe has also  
17 spent years complying with the Department of Interior’s substantive and  
18 procedural requirements to complete this fee-to-trust transfer. Further delay will  
19 impose additional and unjustifiable economic and social burdens on the Tribe and  
20 its members, who have already waited long enough. Intervention is also necessary  
21 to enable the Tribe to challenge any injunctive relief obtained as a result of this  
22 action. *Forest Conservation Council*, 66 F.3d at 1498 (“If appellants are not made  
23 a party to this action, they will have no legal means to challenge that injunction  
24 while it remains in effect.”).

25           **D.     The United States May Not Adequately Protect the Tribe’s**  
26           **Interests in This Suit.**

27           Finally, to justify intervention as of right, the Tribe must show that the  
28 federal defendants’ representation of the Tribe’s interests “*may* be inadequate.”

1 *Forest Conservation Council*, 66 F.3d at 1498 (emphasis in original). The Tribe's  
2 burden in this respect is "minimal." *Id.* This condition is met, for instance, where  
3 existing parties might not advance all of the arguments that the intervenor would  
4 advance, *California v. Tahoe Reg'l Planning Agency*, 792 F.2d 775, 778 (9th Cir.  
5 1986); where the intervenor's stake in the litigation differs from that of the existing  
6 defendant, *see Dimond v. District of Columbia*, 792 F.2d 179, 192 (D.C. Cir.  
7 1986); where the named defendant might not choose to appeal an adverse  
8 judgment, *see Kleissler v. United States Forest Serv.*, 157 F.3d 964, 973 (3d Cir.  
9 1998); or where "the intervenor would offer any necessary elements to the  
10 proceedings that other parties would neglect," *Tahoe Reg'l*, 792 F.2d at 778. In  
11 deciding whether a proposed intervenor is adequately represented, "all reasonable  
12 doubts should be resolved in favor of allowing the absentee . . . to intervene so that  
13 he may be heard in his own behalf." 7C James Wm. Moore *et al.*, MOORE'S  
14 FEDERAL PRACTICE § 1909.

15 Here, the Tribe will bring to this litigation its direct experience and unique  
16 perspective. Although the United States will promote the Tribe's interests in many  
17 respects by defending the administrative action below, the Tribe alone, and not the  
18 United States, would suffer the full negative consequences of an adverse ruling.  
19 Moreover, federal representation of tribal interests is complex and sometimes  
20 conflicting. The United States' wide-ranging interests in the administration of  
21 numerous other provisions of law, including 25 U.S.C. § 465, NEPA, and other  
22 tribal restoration acts is broader than, and at least potentially divergent from, the  
23 Tribe's direct interest in maintaining this fee-to-trust transfer. *See Kleissler*, 157  
24 F.3d at 973-74 (recognizing that the federal government "represents numerous  
25 complex and [potentially] conflicting interests," and the "straightforward" interests  
26 of an intervenor might "become lost in the thicket"); *Sierra Club v. Espy*, 18 F.3d  
27 1202, 1208 (5th Cir. 1994) (recognizing that "the government must present the  
28 broad public interest, not just the economic concerns of the [proposed

1 intervenor]”); *see also, e.g., Mille Lacs Band of Chippewa Indians v. Minnesota*,  
2 989 F.2d 994, 1000-01 (8th Cir. 1993) (holding that because the county’s and  
3 landowners’ “local and individual interests” were not shared by the general State  
4 citizenry, the State would not adequately represent those interests).

5 In fact, in one key respect, the United States has already departed from the  
6 Tribe’s interests in this litigation by agreeing not to challenge Plaintiffs’ request  
7 for preliminary injunctive relief. The Tribe, which seeks the prompt transfer of the  
8 parcel, would not have entered into such an agreement. The interests of the Tribe  
9 and the United States will likely diverge in other respects as well as this lawsuit  
10 progresses.

## 11 **II. The Tribe Also Qualifies for Permissive Intervention.**

12 In the alternative, the Tribe asks that the Court exercise its discretion to  
13 allow permissive intervention pursuant to Rule 24(b)(2), which provides that  
14 “[u]pon timely application anyone may be permitted to intervene in an action . . .  
15 when an applicant’s claim or defense and the main action have a question of law or  
16 fact in common.” “[A]ll that is necessary for permissive intervention is that  
17 intervenor’s ‘claim or defense and the main action have a question of law or fact in  
18 common.’” *Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1108 (9th Cir.  
19 2002) (citing Fed. R. Civ. P. 24(b)). Permissive intervention is certainly  
20 appropriate here.

21 The principal consideration in ruling on a motion to intervene under Rule  
22 24(b) is “whether the intervention will unduly delay or prejudice the adjudication  
23 of the rights of the original parties.” Fed. R. Civ. P. 24(b)(2); *see United States v.*  
24 *Pitney Bowes, Inc.*, 25 F.3d 66, 73 (2d Cir. 1994); 7C MOORE’S FEDERAL  
25 PRACTICE § 1913. In this case, the Tribe’s intervention could cause neither delay  
26 nor prejudice. Because the Tribe seeks only to defend the IBIA’s decision without  
27 injecting new issues into the case, the matters of law and fact that the Tribe will  
28 address are already before the Court. Likewise, because the Tribe seeks to

1 intervene at the outset of the case, its intervention will not delay the proceedings.  
2 Indeed, the Tribe's interest is to ensure the expeditious resolution of this case and  
3 the prompt implementation of the IBIA's decision to take the 6.9-acre parcel into  
4 trust. Finally, the Tribe's unique position offers the advantage of "increased  
5 information (which might reduce the risk of error)." *Massachusetts School of Law*  
6 *at Andover, Inc. v. United States*, 118 F.3d 776, 782 (D.C. Cir. 1997).

7 **Conclusion**

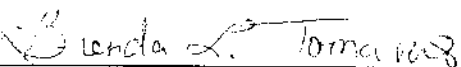
8 The motion to intervene should be granted.

9  
10 Respectfully submitted,

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22  
23 By:   
24 Brenda L. Tomaras

25 Dated: April 6, 2006

26 Counsel for Defendant-Intervenor  
27  
28

1 **CERTIFICATE OF SERVICE**


2 The undersigned certifies that on this 6th day of April, 2006, a true and  
3 correct copy of the Memorandum in Support of the Santa Ynez Band of Mission  
4 Indians' Motion for Intervention was sent by placing the same in the United States  
5 mail, postage prepaid, and properly addressed to:

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IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

22 PRESERVATION OF LOS OLIVOS  
23 and PRESERVATION OF SANTA  
24 YNEZ,  
25 Plaintiffs,  
26 vs.  
27 THE UNITED STATES DEPT. OF  
28 THE INTERIOR, et al.,  
Defendants.

) Case No.: CV-06-1502

) **DECLARATION OF RICHARD**  
) **GOMEZ IN SUPPORT OF THE**  
) **SANTA YNEZ BAND OF MISSION**  
) **INDIANS' MOTION TO**  
) **INTERVENE**

) Date: May 15, 2006  
) Time: 10:00 am

) Hon. A. Howard Matz

1 Pursuant to 28 U.S.C. § 1746, I hereby declare as follows:

2 1. My name is Richard Gomez. I live on the Santa Ynez Band of Mission  
3 Indians' (Chumash or Tribe) reservation, which is located at 100 Via Juana Lane in  
4 Santa Ynez, California 93460 in the County of Santa Barbara, 35 miles northeast  
5 of the City of Santa Barbara, California. *See* Ex. A. The 6.9 acres, which are  
6 subject of the Tribe's fee-to-trust application, is adjacent to the reservation across  
7 State-Route 246. *See* Exs. B, C.

8 2. I have held positions in tribal government for the past two decades and  
9 previously served as both Chairman and Vice Chairman. I am currently serving as  
10 Vice Chairman of the Santa Ynez Band of Mission Indians. The Santa Ynez Band  
11 of Mission Indians was federally recognized in 1901. It is the only federally  
12 recognized Chumash Tribe in the nation.

13 3. The Chumash Indians once numbered in the tens of thousands and lived along  
14 the coast of California. The ancestral territory of the Chumash Indians once  
15 encompassed 7,000 square miles that spanned from the beaches of Malibu to Paso  
16 Robles (including the four Northern Channel Islands). The Chumash also inhabited  
17 territory spanning inland to the western edge of the San Joaquin Valley. Today,  
18 only 158 people are enrolled members of the Santa Ynez Band of Mission Indians,  
19 and the Santa Ynez Indian Reservation, located in Santa Barbara County,  
20 California, occupies only a tiny portion of the Tribe's once grand holdings, or only  
21 138.95 acres.

22 4. Much of this reservation land is in a flood plain and is not suitable for  
23 development because of flooding and drainage problems. In addition, the irregular  
24 topography and flood hazards associated with the multiple creek corridors that run  
25 throughout the reservation severely limit efficient and productive development of  
26 the reservation land. Of the roughly fifty developable acres of reservation land that  
27 is already held in trust, most is already in use.

28

1 5. Prior to 2004, the reservation consisted of approximately 126 acres in two  
2 separated parcels of land, the Northern Reservation and the Southern Reservation.  
3 These two portions of the reservation are now joined by a 12.6-acre parcel that was  
4 accepted into trust on February 4, 2004. The Northern Reservation is used  
5 primarily for residential housing. The Southern Reservation contains a casino,  
6 hotel and spa resort.

7 6. Sovereignty is the lifeblood of Native Americans. To Native Americans,  
8 land, especially protected tribal trust land, sustains and shields Indian communities  
9 culturally and spiritually. Indian trust land promotes a sense of collective identity  
10 and of community. The Santa Ynez Band of Mission Indians is dedicated to the  
11 mission of achieving a protected land base for preservation of the Chumash  
12 culture. In order for the Tribe to continue to grow, economically and as a  
13 sovereign nation, on November 8, 2000, I, along with the other leaders of the  
14 Tribe, filed an application with the Bureau of Indian Affairs to convert the 6.9-acre  
15 parcel, which the Tribe currently owns in fee, into federal trust status to  
16 consolidate its land holdings for the purpose of self-determination. The Tribe  
17 intended at that time to use the parcel to house an administration and cultural  
18 center.

19 7. After we submitted this initial application, the Tribe discovered an intact,  
20 ancient Chumash burial site and village on the 6.9 acres. We therefore revised our  
21 application on May 6, 2002, this time planning the entire project around this  
22 historical find and sacred Tribal land. The Tribe now plans to develop the 6.9-acre  
23 parcel with three components: 1) a cultural center and museum, 2) a 3.5-acre  
24 community commemorative park that will focus on the history of the Chumash  
25 people and act as a preservation buffer for the village site, and 3) an approximately  
26 27,600-square-foot professional building with a small retail space, to generate  
27 revenues for the upkeep of the cultural center and park. *See Ex. D* (architectural  
28 rendering of the plans for the 6.9-acre parcel development).

1 8. The museum and cultural center will consist of a 14,350-square-foot building  
2 constructed of natural indigenous materials such as stone, wood, and stucco, used  
3 in combination with newer building materials like stainless steel woven to  
4 symbolize a Chumash basket. *See* Ex. F. The museum and cultural center will  
5 contain administration offices, copy centers, reception, and curator's office,  
6 instructional space with classrooms and a conference center. The Tribe also plans  
7 to create permanent exhibit space in the center with interactive exhibits and a  
8 gallery. Finally, the Tribe plans to construct a theater, café, library, and gift shop  
9 in the center. *See* Ex. E.

10 9. The Tribe also plans to develop a public park as an integral component of  
11 the museum and cultural center. The park will be visible from the exhibit halls, the  
12 outdoor terrace, and from Highway 246. The park will be permanently set aside to  
13 commemorate the Chumash Indians who once inhabited and traversed the hills and  
14 valleys of Santa Barbara County. The park will also be open to the public, for the  
15 use and enjoyment of the surrounding community. Plans for the public park are  
16 attached to this Declaration. *See* Ex. D.

17 10. Finally, the Tribe plans to construct a two-story facility to be used for  
18 professional office space and small retail shops. The retail facility will be  
19 constructed out of stone, heavy timber, and pastel covered stucco, and it will blend  
20 architectural features found in the Santa Ynez Valley and the existing Chumash  
21 Casino. An adjacent parking lot will be built next to the commercial site, which  
22 will feature a stone or tiled water feature at its center. An architectural rendition of  
23 the proposed commercial retail facility is attached to this Declaration. *See* Ex. G.  
24 Whenever possible, materials and techniques will be used to promote  
25 environmental sustainability and the Tribe's long history of conservation of the  
26 land. Techniques such as passive solar heating and cooling, use of recycled  
27 materials, microclimate landscape design, and recycled wastewater for irrigation  
28

1 will be used in keeping with the Tribe's long history of land conservation. Our  
2 goal is for this development to be a model of environmental sustainability.

3 11. Most of the Tribe's members live on or near the reservation and  
4 consequently have a keen interest in how the 6.9-acre tract is developed—either by  
5 the Tribe or by others. The 6.9-acre parcel is an infinitesimal speck of the Tribe's  
6 historic lands, but it nevertheless holds great importance for the Tribe as the site of  
7 an ancient Chumash village, the archaeological remains of which have yet to be  
8 studied. The Tribe plans to preserve this historic site to commemorate the  
9 traditions of the great Chumash people. The planned commemorative park, as well  
10 as the museum and cultural center, will serve as the focal point for tribal historians,  
11 as well as a physical embodiment of the Tribe's pride in its glorious past. Few, if  
12 any, interests of the Tribe rise above those which we seek to defend by intervening  
13 in this case to support the federal government's fee-to-trust determination  
14 regarding our Tribal homeland.

15  
16 I declare under penalty of perjury that the foregoing is true and correct.

17  
18 Executed on: 3-29-06

  
Richard Gomez

1 **CERTIFICATE OF SERVICE**


2 The undersigned certifies that on this 6th day of April, 2006, a true and  
3 correct copy of the Declaration of Richard Gomez in Support of the Santa Ynez  
4 Band of Mission Indians' Motion to Intervene was sent by placing the same in the  
5 United States mail, postage prepaid, and properly addressed to:

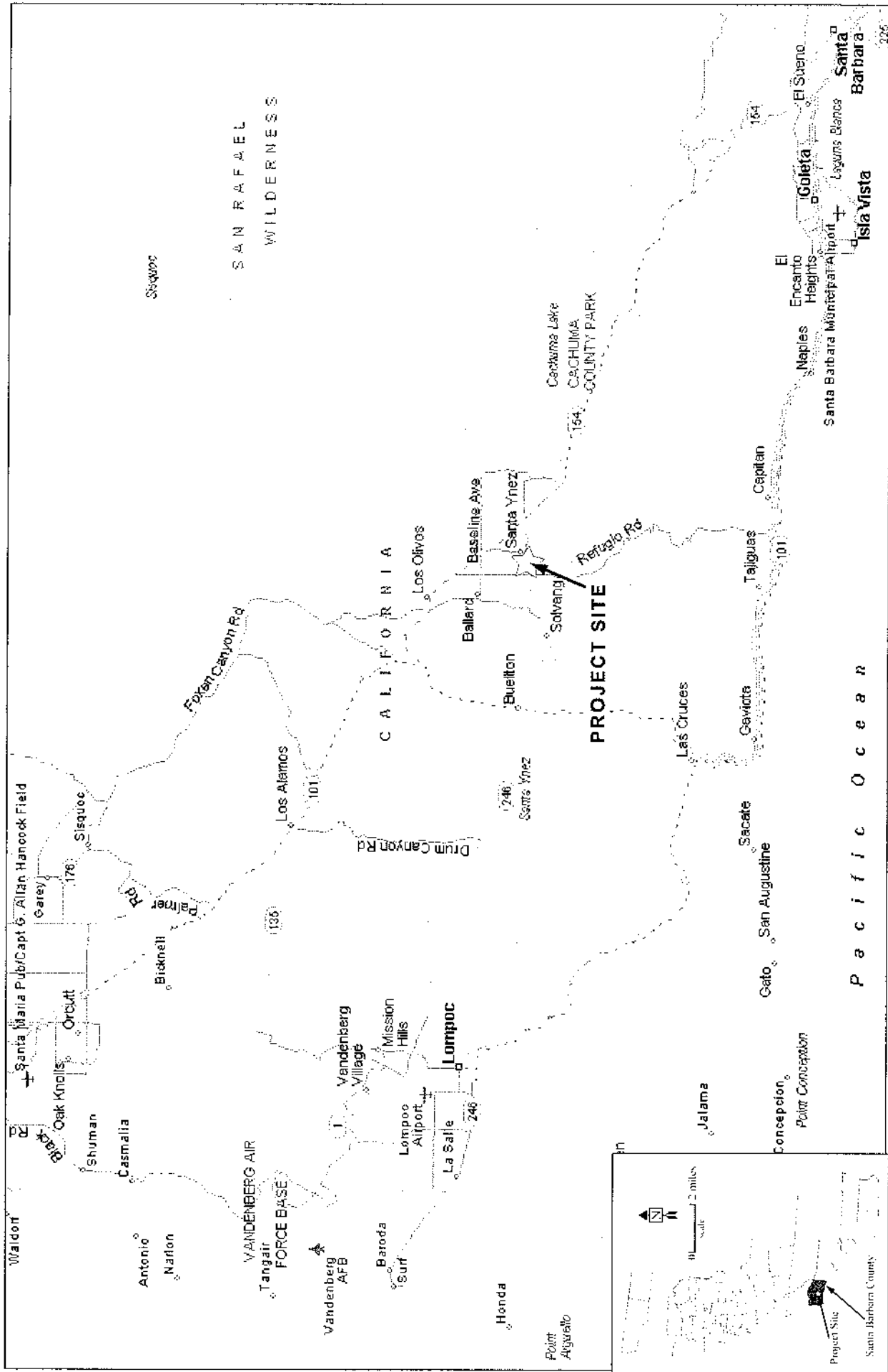
6 Theodore B. Olson  
7 Gibson, Dunn & Crutcher LLP  
8 1050 Connecticut Avenue, NW  
9 Washington, D.C. 20036

10 Scott A. Edelman  
11 Gibson, Dunn & Crutcher LLP  
12 2029 Century Park, East, Suite 4000  
13 Los Angeles, CA 90067

14 Judith Rabinowitz  
15 Indian Resources Division, ENRD  
16 U.S. Department of Justice  
17 301 Howard Street, Suite 1050  
18 San Francisco, CA 94105

19 Roger E. West  
20 Assistant U.S. Attorney  
21 United States Attorney's Office  
22 300 North Los Angeles Street  
23 Suite 7516  
24 Los Angeles, CA 90012

25   
26 \_\_\_\_\_  
27 Zachary N. Somers  
28

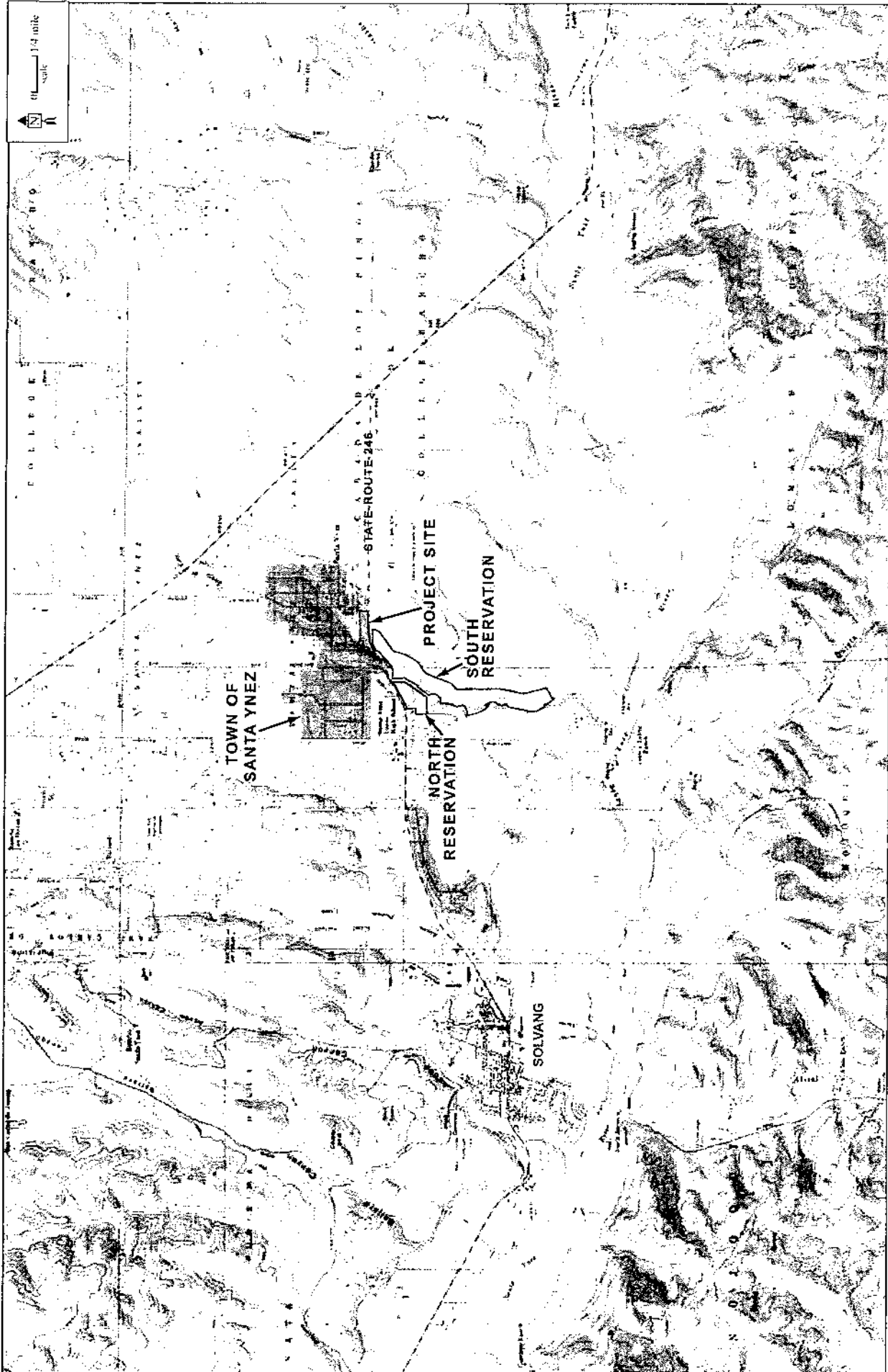


Ex. A

SOURCE: Streets and Trips, 2000 / AES, 2002

Chumash 6.9 Acre Fee-To-Trust Transfer-Environmental Assessment / 201531

Figure 1  
Regional Location Map

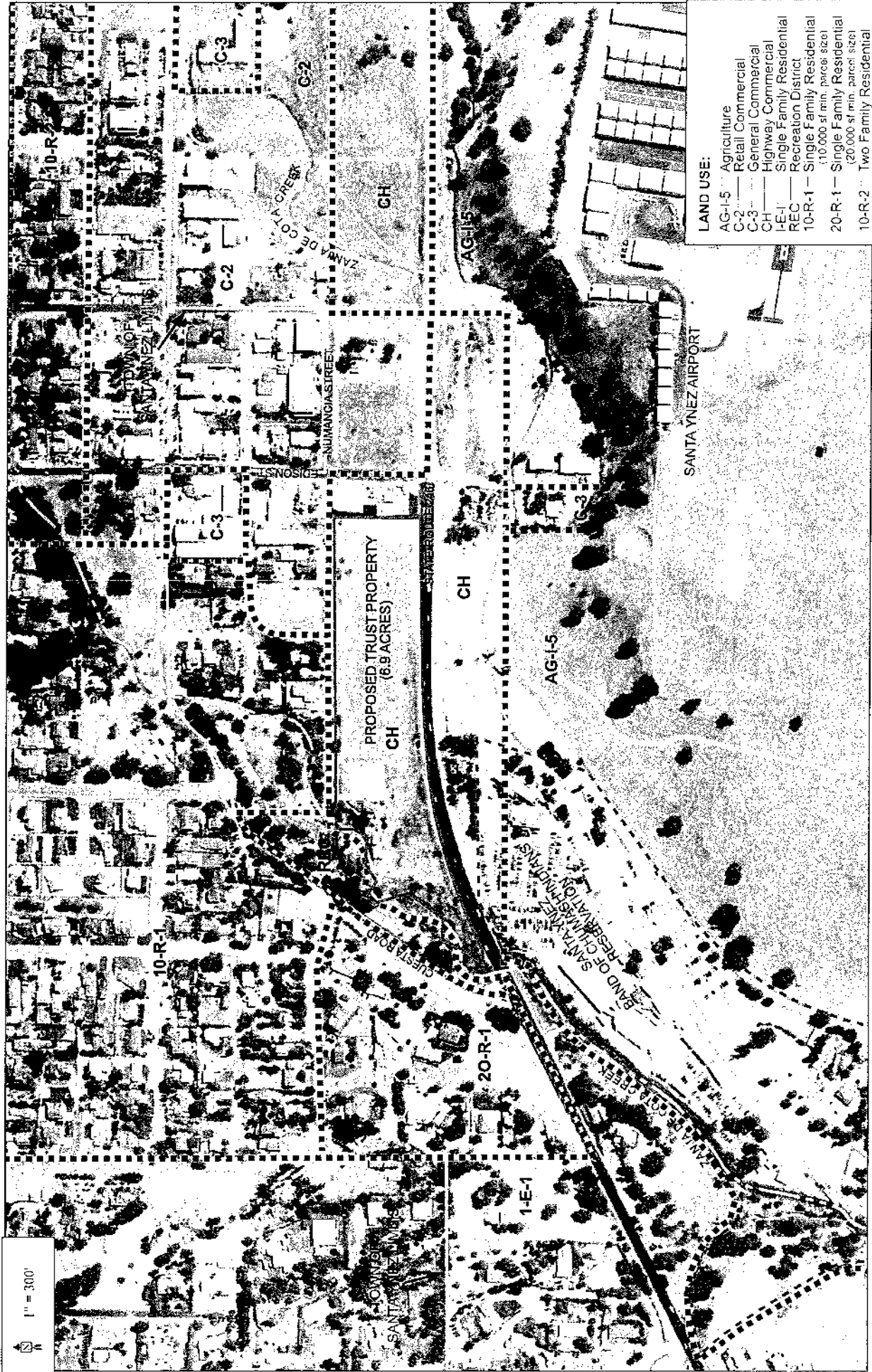


Chumash 6.9 Acre Fee-To-Trust Transfer Environmental Assessment / 201551

**Figure 2**  
Project Vicinity Map

Santa Ynez Quadrangle, USGS 7.5 Minute Series (Topographic) Santa Barbara County California  
 SOURCE: USGS Topographic Maps, 2010 / AES, 2002

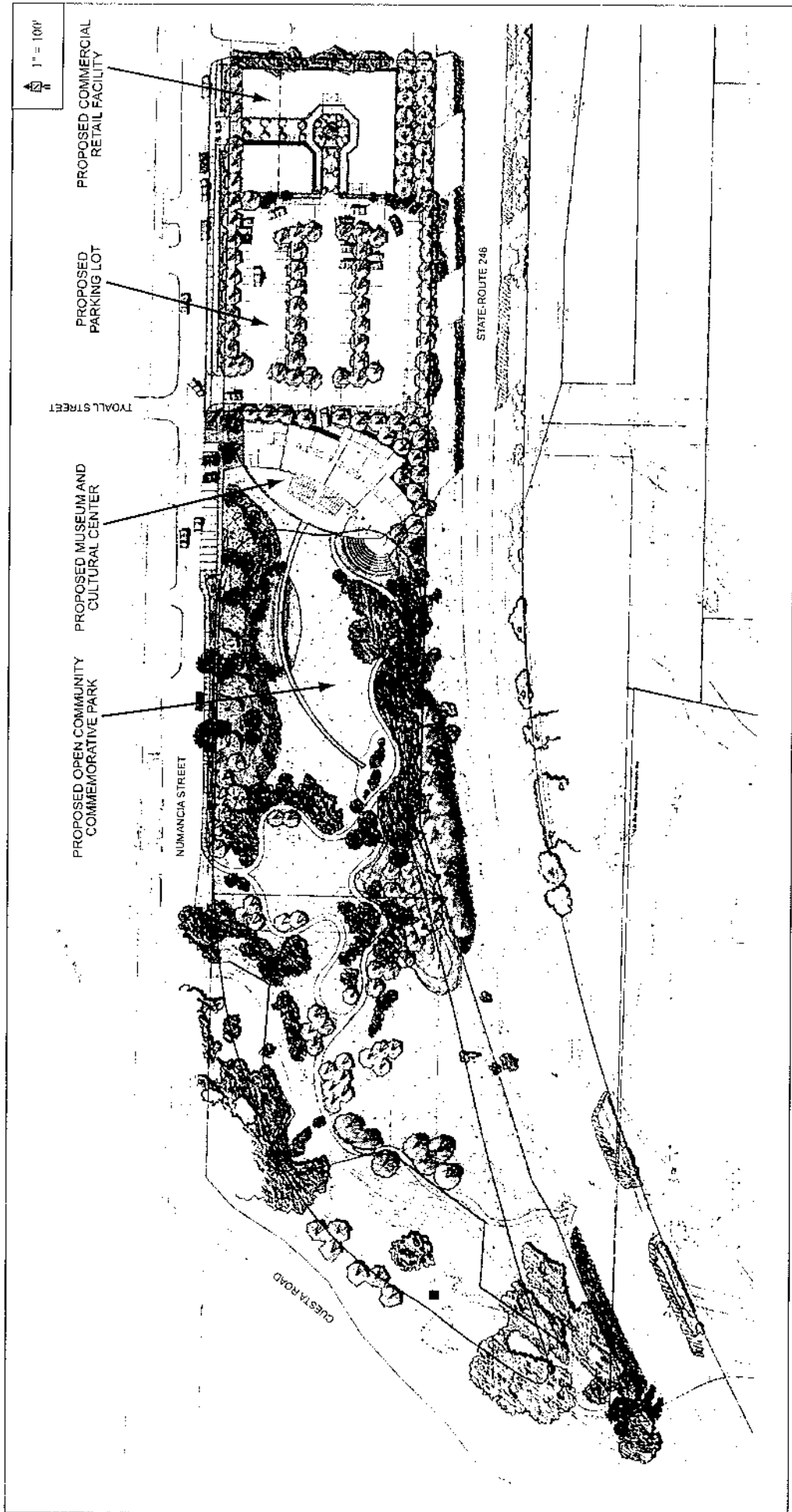
Ex. B



Chamach 6.9 Acre Fee-To-Trust Transfer Environmental Assessment 201151

**Figure 3**  
Surrounding Land Use and Project Vicinity Map

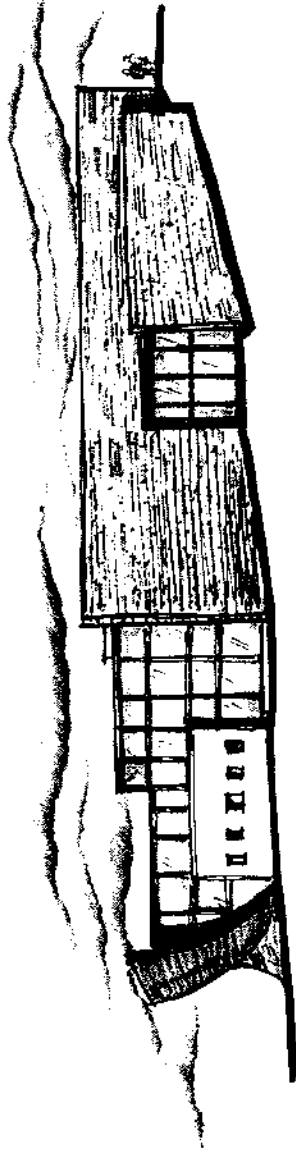
EX. C



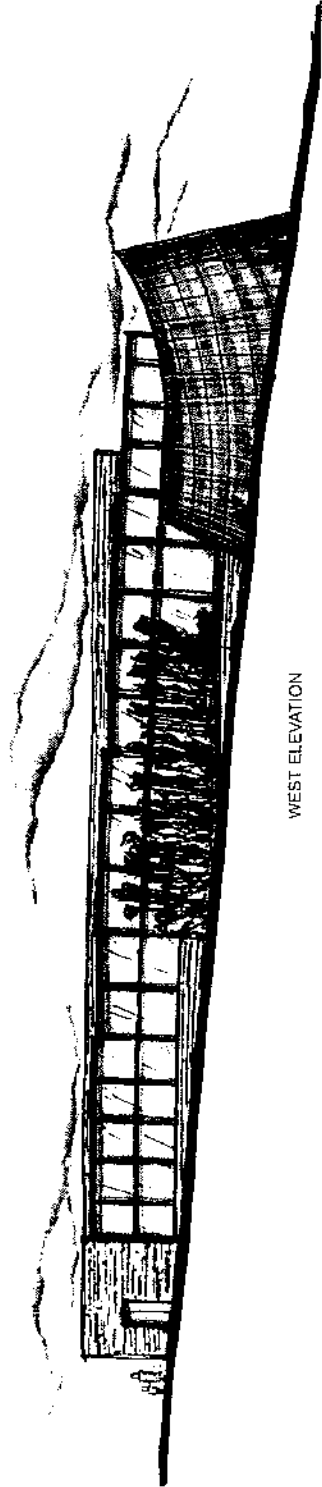
Ex. D



1/8" = 1'



SOUTH ELEVATION



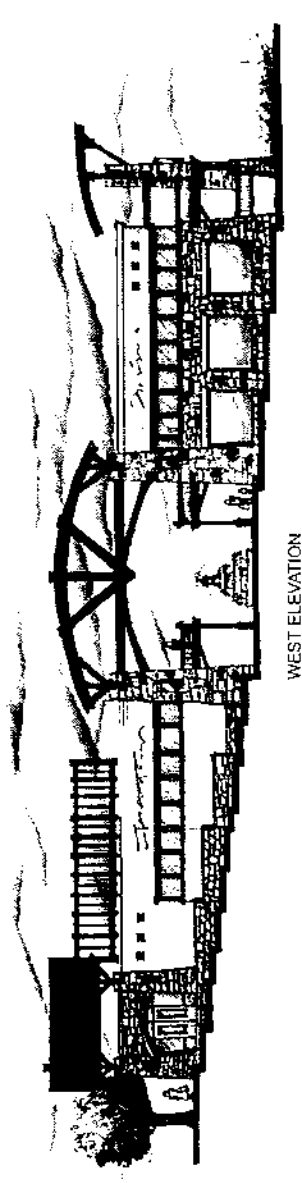
WEST ELEVATION

SOURCE: R. JAWWIK, 2007. AEC, 2002

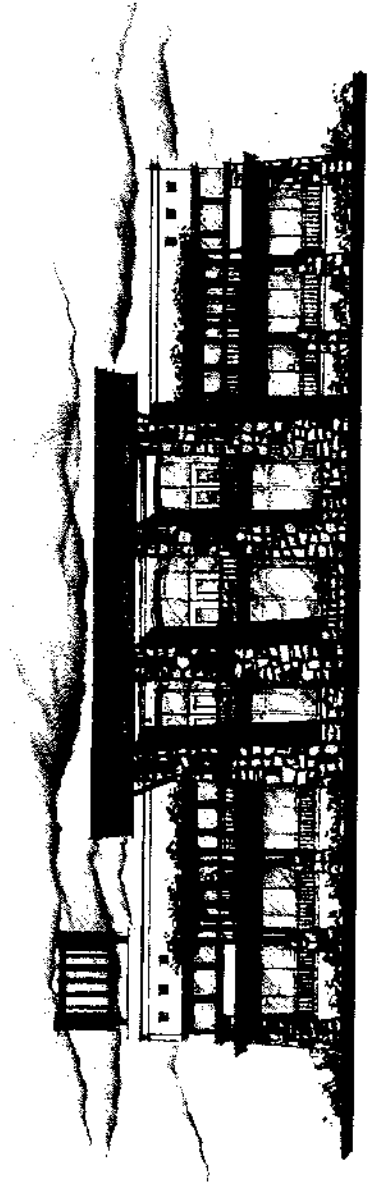
Church & Art: Eco-Efficient Transfer Environmental Assessment, 2011

Figure 6  
Museum and Cultural Center Architectural Renderings

Ex. F



WEST ELEVATION



SOUTH ELEVATION

Ex. G

1 Roger J. Marzulla, SBN 51113  
2 roger@marzulla.com  
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4 nancie@marzulla.com  
5 Zachary N. Somers  
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24 (202) 663-6363 (facsimile)

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(858) 777-5765 (facsimile)

25 IN THE UNITED STATES DISTRICT COURT  
26 FOR THE CENTRAL DISTRICT OF CALIFORNIA

27 PRESERVATION OF LOS OLIVOS  
28 and PRESERVATION OF SANTA  
YNEZ,

Plaintiffs,

vs.

THE UNITED STATES DEPT. OF  
THE INTERIOR, et al.,

Defendants.

Case No.: CV-06-1502

**DEFENDANT-INTERVENOR'S  
CERTIFICATION AS TO  
INTERESTED PARTIES**

Date: May 15, 2006

Time: 10:00 am

Hon. A. Howard Matz

1 Pursuant to Local Rule 7.1-1 the undersigned, counsel of record for  
2 Defendant-Intervenor, Santa Ynez Band of Mission Indians, certifies that the  
3 following listed party (or parties) may have a pecuniary interest in the outcome of  
4 this case. These representations are made to enable the Court to evaluate possible  
5 disqualification or recusal.

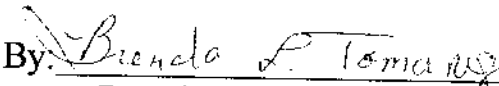
6 1. Santa Ynez Band of Mission Indians  
7  
8

9 Respectfully submitted,

10  
11 Roger J. Marzulla, SBN 51113  
12 Nancie G. Marzulla  
13 Zachary N. Somers  
14 MARZULLA & MARZULLA

15 Seth P. Waxman  
16 Jonathan E. Nuechterlein  
17 Nora Freeman Engstrom  
18 WILMER CUTLER PICKERING  
HALE AND DORR, LLP

19 Brenda Tomaras, SBN 176900  
20 TOMARAS & OGAS, LLP

21  
22 By:   
23 Brenda L. Tomaras

24 Dated April 6, 2006

25  
26  
27  
28  
Counsel for Defendant-Intervenor

1 Roger J. Marzulla, SBN 51113  
2 roger@marzulla.com  
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5 Zachary N. Somers  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

22 PRESERVATION OF LOS OLIVOS  
23 and PRESERVATION OF SANTA  
24 YNEZ,  
25 Plaintiffs,  
26 vs.  
27 THE UNITED STATES DEPT. OF  
28 THE INTERIOR, et al.,  
Defendants.

Case No.: CV-06-1502  
**ANSWER AND AFFIRMATIVE  
DEFENSES OF DEFENDANT-  
INTERVENOR SANTA YNEZ  
BAND OF MISSION INDIANS**  
Date: May 15, 2006  
Time: 10:00 am  
Hon. A. Howard Matz

1 Pursuant to Rule 7(a) and Rule 24(c) of the Federal Rules of Civil  
2 Procedure, Defendant-Intervenor, Santa Ynez Band of Mission Indians (the Tribe),  
3 hereby responds to Plaintiffs' Complaint for Declaratory and Injunctive Relief as  
4 follows:

5 1. Defendant-Intervenor admits that the Interior Board of Indian Appeals  
6 (IBIA) entered the decision attached to the Complaint as Exhibit A on  
7 February 3, 2006; that the Pacific Regional Director entered the decision  
8 attached to the Complaint as Exhibit B on January 14, 2005; that the Bureau  
9 of Indian Affairs (BIA) published the notice attached to the Complaint as  
10 Exhibit C on February 17, 2006; that the 6.9-acre parcel is adjacent to the  
11 Tribe's reservation; and that a casino, hotel, and spa, among other facilities  
12 (including housing for members of the Tribe), are located on the Tribe's  
13 reservation. To the extent, however, that the allegations contained in  
14 Paragraph 1 characterize Plaintiffs' Complaint and its exhibits, no response  
15 is required. Except as so admitted, Defendant-Intervenor denies the  
16 allegations in Paragraph 1 of the Complaint.

17 2. The allegations contained in Paragraph 2 are a characterization of law to  
18 which no response is required. To the extent that a response is deemed  
19 necessary, Defendant-Intervenor denies the allegations in Paragraph 2 of the  
20 Complaint. Defendant-Intervenor further denies, upon information and  
21 belief, that the BIA has taken the 6.9-acre parcel into trust. Defendant-  
22 Intervenor states that Defendants have agreed not to take the subject  
23 property into trust during the pendency of this district court litigation. *See*  
24 *Ex. 1.*

25 3. The allegations contained in Paragraph 3 are a characterization of Plaintiffs'  
26 Complaint to which no response is required. Defendant-Intervenor denies  
27 that there is a need for injunctive relief during the pendency of this lawsuit  
28 in district court. *See id.* To the extent that further response is deemed

1 necessary, Defendant-Intervenor denies the remaining allegations in  
2 Paragraph 3 of the Complaint.

3 4. Defendant-Intervenor lacks sufficient knowledge or information to form a  
4 belief as to the truth or falsity of the allegations contained in Paragraph 4 of  
5 the Complaint and, therefore, denies the same.

6 5. Defendant-Intervenor lacks sufficient knowledge or information to form a  
7 belief as to the truth or falsity of the allegations contained in Paragraph 5 of  
8 the Complaint and, therefore, denies the same.

9 6. Defendant-Intervenor lacks sufficient knowledge or information to form a  
10 belief as to the truth or falsity of the allegations contained in Paragraph 6 of  
11 the Complaint and, therefore, denies the same.

12 7. Defendant-Intervenor admits the identity of Defendants. The remaining  
13 allegations contained in Paragraph 7 are conclusions of law to which no  
14 response is required.

15 8. Defendant-Intervenor lacks sufficient knowledge or information to form a  
16 belief as to the truth or falsity of the allegations contained in Paragraph 8.

17 9. The allegations contained in Paragraph 9 state conclusions of law to which  
18 no response is required.

19 10. The allegations contained in Paragraph 10 state conclusions of law to which  
20 no response is required.

21 11. The allegations contained in Paragraph 11 state conclusions of law to which  
22 no response is required.

23 12. Defendant-Intervenor admits that it filed the original application and the  
24 revised application referenced in Paragraph 12 of the Complaint and that a  
25 casino, spa, hotel, and other facilities (including housing for members of the  
26 Tribe) are located on the Tribe's reservation. The Tribe flatly denies that the  
27 6.9-acre parcel is part of any plan other than the one submitted as part of the  
28 referenced application and specifically avers that the 6.9-acre parcel is

1 planned for preservation of archaeological remains and the Indian burial site,  
2 an open commemorative park, museum and cultural center celebrating the  
3 Chumash culture, and a two-story professional/retail building and  
4 supplementary facilities. Except as so admitted, Defendant-Intervenor  
5 denies the remaining allegations of Paragraph 12 of the Complaint.

6 13. Defendant-Intervenor admits the allegations of Paragraph 13 of the  
7 Complaint. However, Defendant-Intervenor denies, upon information and  
8 belief, that the BIA has taken the 6.9-acre parcel into trust. *See* Ex. 1.

9 14. Defendant-Intervenor admits that Plaintiffs filed the document attached as  
10 Exhibit D to the Complaint. The remainder of the allegations contained in  
11 Paragraph 14 state conclusions of law to which no response is required.  
12 Except as so admitted, Defendant-Intervenor denies the allegations in  
13 Paragraph 14 of the Complaint.

14 15. Defendant-Intervenor admits that the Environmental Assessment (EA) was  
15 prepared by the Tribe and was subsequently adopted by the BIA, and that  
16 BIA concluded that no Environmental Impact Statement was required. The  
17 remainder of the allegations contained in Paragraph 15 state conclusions of  
18 law to which no response is required. Except as so admitted, Defendant-  
19 Intervenor denies the allegations in Paragraph 15 of the Complaint.

20 16. Defendant-Intervenor admits the allegations of Paragraph 16 of the  
21 Complaint.

22 17. Defendant-Intervenor admits that on August 11, 2005, Plaintiffs filed a  
23 response to the Regional Director's motion to dismiss. The remainder of the  
24 allegations contained in Paragraph 17 state conclusions of law to which no  
25 response is required. Except as so admitted, Defendant-Intervenor denies  
26 the allegations in Paragraph 17 of the Complaint.

27 18. Defendant-Intervenor admits that the IBIA entered the decision attached to  
28 the Complaint as Exhibit A on February 3, 2006. The remainder of the

1 allegations contained in Paragraph 18 state conclusions of law to which no  
2 response is required. Except as so admitted, Defendant-Intervenor denies  
3 the allegations in Paragraph 18 of the Complaint.

4 19. The allegations contained in Paragraph 19 state conclusions of law to which  
5 no response is required.

6 20. Defendant-Intervenor admits that the quoted language appears in 25 U.S.C.  
7 § 465 and 25 C.F.R. § 151.10. The remaining allegations contained in  
8 Paragraph 20 state conclusions of law to which no response is required.

9 21. Defendant-Intervenor admits that the quoted language appears in 42 U.S.C.  
10 § 4332(2)(C) and 42 U.S.C. § 4331(a). The remaining allegations contained  
11 in Paragraph 21 state conclusions of law to which no response is required.

12 22. The allegations contained in Paragraph 22 state conclusions of law to which  
13 no response is required.

14 23. The allegations contained in Paragraph 23 state conclusions of law to which  
15 no response is required.

16 24. The allegations contained in Paragraph 24 state conclusions of law to which  
17 no response is required.

18 25. Defendant-Intervenor admits that several declarations were filed as alleged.  
19 The remainder of the allegations contained in Paragraph 25 state conclusions  
20 of law to which no response is required.

21 26. The allegations contained in Paragraph 26 state conclusions of law to which  
22 no response is required. Defendant-Intervenor further denies, upon  
23 information and belief, that the BIA has taken the 6.9-acre parcel into trust.  
24 To the extent further response is deemed necessary, Defendant-Intervenor  
25 denies the remaining allegations of Paragraph 26 of the Complaint.

26 27. Paragraph 27 contains conclusions of law and other argumentative  
27 statements to which the Tribe is not required to respond. To the extent that a  
28

1 response is deemed necessary, Defendant-Intervenor denies the allegations  
2 in Paragraph 27 of the Complaint.

3 28. The allegations contained in Paragraph 28 state conclusions of law to which  
4 no response is required. To the extent that a response is deemed necessary,  
5 Defendant-Intervenor denies the allegations in Paragraph 28 of the  
6 Complaint.

7 29. Paragraph 29 contains conclusions of law and other argumentative  
8 statements to which the Tribe is not required to respond. To the extent that a  
9 response is deemed necessary, Defendant-Intervenor denies the allegations  
10 in Paragraph 29 of the Complaint.

11 30. Defendant-Intervenor denies the first sentence of Paragraph 30 of the  
12 Complaint. The remainder of the allegations contained in Paragraph 30 state  
13 conclusions of law to which no response is required.

14 31. With respect to the first sentence of Paragraph 31, Defendant-Intervenor  
15 denies that the relief sought by Plaintiffs in this action will have any effect  
16 other than requiring further review by the IBIA. The remainder of the  
17 allegations contained in Paragraph 31 state conclusions of law to which no  
18 response is required.

19 32. The allegations contained in Paragraph 32 state conclusions of law to which  
20 no response is required. To the extent that a response is deemed necessary,  
21 Defendant-Intervenor denies the allegations in Paragraph 32 of the  
22 Complaint.

23 33. The allegations contained in Paragraph 33 state conclusions of law to which  
24 no response is required. To the extent that a response is deemed necessary,  
25 Defendant-Intervenor denies the allegations in Paragraph 33 of the  
26 Complaint.

27 34. The allegations contained in Paragraph 34 state conclusions of law to which  
28 no response is required. To the extent that a response is deemed necessary,

1 Defendant-Intervenor denies the allegations in Paragraph 34 of the  
2 Complaint.

3 35. Defendant-Intervenor reasserts and incorporates by reference its answers to  
4 Paragraphs 1 through 34.

5 36. Defendant-Intervenor admits that the quoted language appears in 5 U.S.C.  
6 § 706. The remaining allegations contained in Paragraph 36 state  
7 conclusions of law to which no response is required.

8 37. The allegations contained in Paragraph 37 state conclusions of law to which  
9 no response is required. To the extent that a response is deemed necessary,  
10 Defendant-Intervenor denies the allegations in Paragraph 37 of the  
11 Complaint.

12 38. Defendant-Intervenor denies the allegations of Paragraph 38 of the  
13 Complaint.

14 39. Defendant-Intervenor reasserts and incorporates by reference its answers to  
15 Paragraphs 1 through 38.

16 40. The allegations contained in Paragraph 40 state conclusions of law to which  
17 no response is required. To the extent that a response is deemed necessary,  
18 Defendant-Intervenor denies the allegations of Paragraph 40 of the  
19 Complaint.

20 41. Defendant-Intervenor lacks sufficient knowledge or information to form a  
21 belief as to the truth or falsity of the allegations contained in Paragraph 41 of  
22 the Complaint and, therefore, denies the same.

23 42. Defendant-Intervenor denies the allegations of Paragraph 42 of the  
24 Complaint.

25 43. Defendant-Intervenor denies the allegations of Paragraph 43 of the  
26 Complaint. Specifically, Defendant-Intervenor denies that there is a need  
27 for injunctive relief during the pendency of this lawsuit in district court. *See*  
28 Ex 1.

1 44. The allegations contained in Paragraph 44 state conclusions of law to which  
2 no response is required. Defendant-Intervenor denies that there is a need for  
3 injunctive relief during the pendency of this lawsuit in district court. *See id.*  
4 To the extent that further response is deemed necessary, Defendant-  
5 Intervenor denies the remaining allegations of Paragraph 44 of the  
6 Complaint.

7 45. The allegations in the Prayer for Relief constitute Plaintiffs' claims for relief  
8 which do not require response. Defendant-Intervenor, however, denies  
9 that Plaintiffs are entitled to any relief.

#### 10 **GENERAL DENIAL**

11 All allegations of the Complaint which have not been specifically admitted,  
12 denied or otherwise answered are hereby denied.

#### 13 **AFFIRMATIVE DEFENSES**

- 14 1. Plaintiffs lack standing to bring the claims alleged in the Complaint.
- 15 2. Plaintiffs have failed to state a claim on which relief can be granted.
- 16 3. The Court lacks subject matter jurisdiction over this matter.

#### 17 **PRAYER FOR RELIEF**

18 Based upon these answers and affirmative defenses, the Tribe respectfully  
19 requests that the Court enter judgment as follows:

- 20 1. Dismissing Plaintiffs' Complaint in its entirety and with prejudice.
- 21 2. Award Defendants the costs of this litigation and reasonable attorneys fees,  
22 and such other and further relief for Defendants as the Court may deem  
23 just and equitable.

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Respectfully submitted,

Roger J. Marzulla, SBN 51113  
Nancie G. Marzulla  
Zachary N. Somers  
MARZULLA & MARZULLA

Seth P. Waxman  
Jonathan E. Nuechterlein  
Nora Freeman Engstrom  
WILMER CUTLER PICKERING  
HALE AND DORR, LLP

Brenda Tomaras, SBN 176900  
TOMARAS & OGAS

By: Brenda L. Tomaras  
Brenda L. Tomaras

Dated: April 6, 2006

Counsel for Defendant-Intervenor

1 **CERTIFICATE OF SERVICE**


2 The undersigned certifies that on this 6th day of April, 2006, a true and  
3 correct copy of the Answer and Affirmative Defenses of Defendant-Intervenor  
4 Santa Ynez Band of Mission Indians was sent by placing the same in the United  
5 States mail, postage prepaid, and properly addressed to:

6 Theodore B. Olson  
7 Gibson, Dunn & Crutcher LLP  
8 1050 Connecticut Avenue, NW  
9 Washington, D.C. 20036

10 Scott A. Edelman  
11 Gibson, Dunn & Crutcher LLP  
12 2029 Century Park, East, Suite 4000  
13 Los Angeles, CA 90067

14 Judith Rabinowitz  
15 Indian Resources Division, ENRD  
16 U.S. Department of Justice  
17 301 Howard Street, Suite 1050  
18 San Francisco, CA 94105

19 Roger E. West  
20 Assistant U.S. Attorney  
21 United States Attorney's Office  
22 300 North Los Angeles Street  
23 Suite 7516  
24 Los Angeles, CA 90012

25   
26 \_\_\_\_\_  
27 Zachary N. Somers  
28

# **EXHIBIT 1**



GIBSON, DUNN & CRUTCHER LLP

Roger E. West, Esq.

March 10, 2006

Page 2

As I mentioned by phone, we are filing the complaint this afternoon, and I hope that my attorney service will be able to make it to your office in time to serve you. In the meantime, however, I am providing you with a courtesy copy of the final complaint that we are filing today.

I very much appreciate your courtesy and cooperation. Please advise me immediately if this letter does not accurately reflect our agreement.

Very truly yours,



Scott A. Edelman

SAE/irg/20189814\_1.DOC  
Enclosure