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10 **UNITED STATES DEPARTMENT OF INTERIOR**
11 **OFFICE OF HEARINGS AND APPEALS**

12 **INTERIOR BOARD OF INDIAN APPEALS**

13 IN RE: JUNE 17, 2013 DECISION BY
14 PACIFIC REGIONAL DIRECTOR TO
15 APPROVE LAND CONSOLIDATION
16 AND ACQUISITION PLAN OF THE
17 SANTA YNEZ BAND OF CHUMASH
18 INDIANS

Docket No.: _____
[not yet assigned]

**NOTICE OF APPEAL AND STATEMENT
OF REASONS FOR APPEAL**

1 Nancy Crawford-Hall appeals the decision of the Regional Director, Pacific Region, Bureau
2 of Indian Affairs, June 17, 2013 ("the Order"), which approved the Proposed Land Consolidation
3 and Acquisition Plan ("Proposed Plan") submitted by the Santa Ynez Band of Chumash Indians (the
4 "Applicant"). A copy of the Order is attached hereto as Exhibit A. The reasons for the appeal are as
5 follows.

6 STATEMENT OF REASONS FOR THE APPEAL

7 **A. The Order Lacks the Requisite Findings And Is Fatally Flawed On This Basis, 8 Alone**

9 The one-paragraph Order fails to cite any of the evidentiary and factual bases on which it was
10 decided. The basic factual findings which were necessary to support the Order include, but are not
11 limited to, the following:

- 12 • A finding that there is a supported historical and factual connection of the Applicant
13 to the over 11,000 acres of off-reservation land sought for future consolidation into
14 trust under the Proposed Plan;
- 15 • A finding that there is a historical and factual basis upon which the Applicant may
16 assert any right under law to obtain a fee-to-trust transfer of land; and,
- 17 • A finding that the Applicant has met the criteria required under the regulations cited
18 in the Order and the other relevant regulations for land transfer to trust, including but
19 not limited to 25 C.F.R. § 151.11.

20 The Order is patently defective in failing to indicate the basis on which it was granted.
21 Indeed, the sole basis for the Proposed Plan appears to be the Applicant's assertion of some right to a
22 geographical area held previously by the Catholic Church, purportedly for its tribal benefit.
23 However, not only does the Proposed Plan make this assertion without any citation to evidentiary
24 support, the assertion itself is demonstrably wrong. As a matter of fact, the Applicant has no
25 historical connection to the 11,000 plus acres, nor did the Catholic Church hold the land for any
26 purpose related to the Applicant or any tribe.

27 In short, the Regional Director apparently adopted -- without question or reasoned review --
28 the predicate, unsupported assertions made by the Applicant. This glaring lack of any investigation

1 or rational basis for the Order renders it fatally flawed. This is particularly true in this case, where
2 the Regional Director also failed to afford notice and opportunity to be heard on the Proposed Plan,
3 as set forth below.

4 **B. The Order Covering Over 11,000 Acres Was Entered Notwithstanding the**
5 **Applicant's Failure to Comply With the National Environmental Policy Act**

6 The Order approves a Proposed Plan which also failed to comply with the National
7 Environmental Policy Act ("NEPA"), or even with the California statutory environmental scheme
8 ("CEQA"). The Proposed Plan sought approval for a potential taking into trust of over 11,000 acres
9 of off-reservation land, with no analysis of the anticipated environmental impacts. The Order was
10 then used by the Applicant as support for the Applicant's subsequent fee-to-trust application, in
11 which environmental analysis was only provided for a small portion of those acres.

12 The Regional Director's approval of an initial end-run around the requirements of NEPA,
13 affording the Applicant a subsequent attempt to piggy-back its lack of environmental analysis into a
14 fee-to-trust application, is inconsistent with the law. The impacts to the affected community and
15 region are potentially devastating. As only one example, the 11,000 plus acres sits over the largest
16 aquifer in the valley. Over-use of this aquifer will adversely impact untold acres of agricultural and
17 other uses in the region. In addition, drainage of reclaimed water from the approved tribal
18 consolidation area will impact the adjacent land, including a conservation easement and pastured
19 livestock.

20 The failure to consider environmental impacts in connection with anticipated expansion of a
21 potential trust area vitiates the Order.

22 **C. The Order Is Inconsistent With Relevant Law and Regulations On Trust**
23 **Transfers, Effectively Subverting Those Laws and Regulations**

24 The Order apparently endorses both (1) the assumption that a "tribal consolidation area" may
25 be approved for potential future expansion into off-reservation land not associated with a tribe; and
26 (2) that "tribal consolidation areas" (even off-reservation areas such as the instant one) "do not
27 require the high level of scrutiny that off-reservation areas do." (Proposed Plan p. 2, citing 25
28 C.F.R. §§ 151.2(h) and 151.3(a)(1).) However, these two primary assumptions violate existing law.

First, there is no authorized basis on which to approve a designation of "tribal consolidation

1 area” for 11,000 plus acres which, among other things: were never part of any historic Indian
2 ownership area; are not adjacent to a reservation; and do not de-fractionalize existing reservation
3 land.

4 Second, the Order effectively vitiates the regulatory and statutory levels of scrutiny for trust
5 transfer, as well as the existing guidelines of the Secretary of the Interior. Neither 25 C.F.R. §
6 151.2(h) nor 25 C.F.R § 151.3(a)(1) supports the use of the “tribal consolidation area” determination
7 as a means to lower the level of scrutiny required for off-reservation trust transfer determinations.
8 (See, *e.g.*, 25 C.F.R. §§ 151.10 and 151.11.)

9 In approving both of these erroneous concepts, the Order exceeded the authority of the
10 Regional Director. Because the Order is inconsistent with relevant regulations and law, it cannot
11 stand.

12
13 **D. The Regional Director Failed to Provide Notice and Opportunity To Be Heard**
14 **To Interested Parties, Including Adversely Affected Landowners, Community**
15 **Members, and Government Entities. The Regional Director Further Failed to**
16 **Provide Notice of the Opportunity to Appeal the Order**

17 The Regional Director failed to give notice and opportunity to be heard to interested parties
18 before approving the Proposed Plan. Had they been given such notice, interested parties would have
19 challenged the factual bases on which the Order rests. Given the far reaching nature of this land use
20 Order, and its foundational inclusion as part of a subsequent fee-to-trust application, interested
21 parties had a fundamental right to be heard on this matter before the Regional Director made her
22 decision.

23 The lack of notice and opportunity to be heard constitutes a violation of due process and a
24 violation of administrative law. Indeed, the Regional Director also failed to comply, after entry of
25 the Order, with the requirement to give notice of the right to appeal the Order. This constitutes an
26 additional ground for reversal.

27 **E. The Order Is Arbitrary and Capricious**

28 The Order is arbitrary and capricious, and an abuse of discretion, for numerous reasons.
These include, among others, the following:

- 1 • The fact that the decision was made with an apparently total lack of investigation of
- 2 the underlying facts on which it was based, or a review of all relevant facts;
- 3 • The phrase, "tribal consolidation area," was used to approve a land acquisition
- 4 procedure which vitiated existing statutory and regulatory requirements for fee-to-
- 5 trust determinations;
- 6 • The Order effectively invalidated NEPA requirements;
- 7 • The Order was purportedly premised on relevant regulations but failed to make any
- 8 relevant findings under the regulations implicated by the far-reaching Proposed Plan,
- 9 and specifically by 25 C.F.R. Part 151;
- 10 • The Proposed Plan was approved without expressly finding both a rational basis in
- 11 fact and law for its approval, and a need to do so.

12 **RELIEF REQUESTED**

13 Appellant requests the following relief:

- 14 1. That the Order be overturned and vacated; and,
- 15 2. That the fee-to-trust application filed by Applicant after the entry of the Order,
- 16 and which is based in part on the Order, be stayed pending the determination of all issues on
- 17 this appeal.

18
19 DATED: September 19, 2013

Respectfully Submitted,


20
21 By: 
22 A. Barry Cappello
23 Wendy D. Welkom
24 Attorneys for Nancy Crawford-Hall

EXHIBIT A

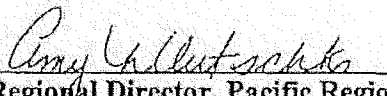


UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF INDIAN AFFAIRS
PACIFIC REGION

APPROVAL OF PROPOSED LAND CONSOLIDATION & ACQUISITION PLAN
SANTA YNEZ BAND OF CHUMASH INDIANS

The within Proposed Land Consolidation & Acquisition Plan, consisting of pages 1 - 9 with Exhibits A and B and Tribal Resolution #926 dated March 27, 2013, is hereby approved pursuant to 25 CFR §151.2(h) and §151.3(a)(1). All acquisition applications submitted pursuant to said plan shall be considered within the Secretary's discretion and under all applicable laws and regulations, including the National Environmental Policy Act of 1969.

Date: 6/17/13


Regional Director, Pacific Region
Bureau of Indian Affairs
Sacramento, California

Pursuant to the authority
delegated by 209 DM 8, 230 DM 1
and 3 IAM 4

Santa Ynez Band of Chumash Indians

**PROPOSED LAND CONSOLIDATION AND
ACQUISITION PLAN**

March 2013

Purpose and Scope

Pursuant to 25 C.F.R § 151.2(h)¹, the Santa Ynez Band of Chumash Indians ("Santa Ynez" or "Tribe") submits this Proposed Tribal Consolidation and Acquisition Plan ("Plan") for the approval of the authorized representative of the Secretary of the Interior.² The Federal Government's land acquisition policy at 25 C.F.R. 151.3(a)(1) specifically contemplates tribal consolidation areas to be akin to both on-reservation and adjacent lands with respect to acquisition for trust purposes. This means that tribal consolidation areas, like on-reservation or adjacent lands, do not require the high level of scrutiny that off-reservation acquisitions do, and further affords such acquisitions a greater level of credibility as part of a plan which has already been reviewed and approved by the BIA.

The purpose of this Plan is to assist the Tribe in acquiring additional lands in order to increase the tribal land base and provide sufficient land for housing, economic development and governmental purposes. The Tribe believes that planning for land acquisitions within the area historically held for the Tribe by the Roman Catholic Church will help the Tribe achieve its goals of providing ample housing and governmental services to its members. In addition, the Tribe has been offered restricted public domain allotments held by individual tribal members or descendants of the original Indian allottees within the Los Padres National Forest. Such lands could be used for mitigation or exchange purposes.

The Tribe's plan includes the geographical area which was the subject of the 1897 Quiet Title Action brought by the Roman Catholic Church (Bishop of Monterey), encompassing approximately 11,500 acres of the College

¹ The Intent of this Tribal Consolidation and Acquisition Plan is to meet the provisions of 25 C.F.R. §§ 151.2(h) and 151.3(a)(1). See attached Exhibit A, an IBIA case that addresses this provision. The IBIA found that the Regional Director was not acting reasonably when he used the ILCA-derived criteria to assess the appellant's "Land Consolidation and Acquisition Plan." *Absentee Shawnee Tribe. Anadarko Area Director* (1990) 18 IBIA 156, 163.

² 25 C.F.R. 151.2 (Definitions) includes, in part: (h) *Tribal consolidation area* means a specific area of land with respect to which the tribe has prepared, and the Secretary has approved, a plan for the acquisition of land in trust status for the tribe. Further, 151.3(a)(1) (Land acquisition policy) states: (1) When the property is located within the exterior boundaries of the tribe's reservation or adjacent thereto, or within a tribal consolidation area; or

Rancho ("Tribal Consolidation Area").³ As described more fully below, this area was part of the Tribe's ancestral territory and comprised most of its historic territory. The Tribal Consolidation Area was once part of the lands of Mission Santa Ines and was part of the subsequent Rancho Canada de los Pinos recognized by the U.S. government as well as being close to an individual land grant made to a Santa Ynez Chumash Indian by Mexican Gov. Micheltoarena. All these lands were considered to have been the property of the Santa Ynez Mission Indians by the Spanish and Mexican governments and the Catholic Church. Even after California statehood, the Catholic Church carried forward this theory of land tenure by the Santa Ynez Chumash.

The Santa Ynez Band of Chumash Mission Indians has clear connections to the Tribal Consolidation Area based on law and cultural use. The tribal government has the opportunity to return the lost land - which it has had to purchase back - to its jurisdiction and stewardship once more through federal trust status. The intent of this Plan is to assist the Tribe with that goal.

History of the Santa Ynez Reservation

The Chumash people have been associated with the property included within this Plan and surrounding territory since time immemorial. In fact, a rich record exists of the Santa Ynez Chumash's historical connections to these lands. Archaeological evidence supports the area's use by the Chumash people before contact with the Spanish. This use continued during and after the Mission Period.

The Santa Ynez Chumash, ultimately, ended up with just a sliver of land under its jurisdiction. In 1906, the federal government placed 99 acres into federal trust around Zanja de Cota Creek. Today the Santa Ynez Indian Reservation comprises about 137 acres. This area includes unusable lands such as a streambed and an easement for a state highway that cuts through the reservation.

The acquisition of additional property within the Plan area represents an opportunity for the Chumash people to return a small portion of their historical territory to their stewardship. The goal is to create a tribal community on the land by building homes for tribal families. This also will

³ See attached Exhibit B, map of the proposed consolidation and acquisition area.

help relieve overcrowded conditions on the present reservation, where much of the housing stock was built through HUD low-income grant programs.

The Chumash have long-standing cultural and spiritual ties to the property encompassed within the Plan and the surrounding territory. The legal record - involving actions by the U.S. government, Mexican government, and the Spanish through their Mission outposts - also demonstrates the land tenure history of Santa Ynez Chumash in this territory.

Except for a brief experience with tribes in the lower Colorado River basin along the present-day Arizona border, the Chumash were the first California tribal group that Europeans encountered in what is now California. Explorer Cabrillo sailed to the islands and coastal areas inhabited by the Chumash in 1542.

The Mission Era

The Spanish built five Catholic missions among the Chumash people. Mission Santa Ines was established in 1804 as a halfway point between the Santa Barbara and La Purisma (Lompoc) missions. Each mission was granted about seven square leagues of land surrounding it for the use and support of the local Indian communities. That would have given Mission Santa Ines more than 441 square miles of land.

In practice, the missionaries and soldiers were brutal men who enslaved the local Chumash people and nearly decimated them through disease, starvation and harsh treatment. Despite this, the sentiment of the Spanish and Mexican governments and the Catholic Church was that the lands of the missions essentially were what we know of today as reservations, for the use and upkeep of the Indians. The tribal members forced to live and work near the missions were considered to be neophytes or Christianized Indians.

The Church viewed the land to be held in trust for the Indians, who had a "natural" right of occupancy. The Church and Spain considered title to the land to be with the Indians as decreed from the "laws of nature and imminent occupation." The priests were just the administrators of the land on behalf of their Indian "wards." That is, the mission activity was not accompanied by a conveyance of land to the missions themselves. Under the

Spanish theory of colonization, the mission establishments weren't intended to be permanent.

The slave-like conditions at the mission led to the Chumash Revolt of 1824. It started when soldiers flogged an Indian from La Purisma mission who was at Santa Ines. The revolt spread to the Santa Barbara and La Purisma missions and led to the burning of the Santa Ines mission. Many Chumash feared the soldiers would kill them and fled to the San Joaquin Valley. The priests and military knew they couldn't keep the missions going without the Indian slave labor so soldiers rounded up the Chumash and brought them back to the mission.

A decade after the revolt, the Mexican government secularized the missions and intended to disperse the lands to the Indians and settlers. The goal never was fully accomplished. Many Chumash did flee the mission after the secularization efforts and ended up in the area around Zanja de Cota Creek in the Canada de la Cota. The area still was considered to be within the lands of the Catholic Church.

California statehood

Statehood for California in 1850 ushered in new attempts to deal with the Chumash land. The United States and California began addressing land claims and Mexican land grants that arose from the Treaty of Guadalupe Hidalgo.

The Bishop of Monterey petitioned the Board of Commissioners in charge of land claims in California on behalf of the Catholic Church and "Christianized Indians" associated with the 20 missions across California. Among his requests: That the government confirm at least one square league area to each mission, and confirm the grants to individual Indians and communities.

The basis of the petition was two-fold. First, the Church stated it held the land in trust for the Indians. Second, the Church had valid grants based upon the laws of the Spanish and Mexican governments and the Catholic Church. The Church's view was this: The land and any revenues from it belonged to the Indians. The role of the missionaries was to make sure that the land and revenues were cared and accounted for.

The Land Claims Commission denied the claims of the Individual Santa Ynez Indians. But it did grant the Bishop of Monterey the right to the Canada de los Pinos, the area that is included within the Plan. The federal government in 1861 issued a patent for those lands to the Bishop. The Chumash villages around Mission Santa Ines lands remained within the land grant.

Mission Indian Relief Act

In 1891, Congress passed the Mission Indian Relief Act designed to help those Indians who had been associated with and enslaved by the missions. Many of these communities were destitute because their land had been taken away from them. In fact, much of the land these Indians had lived and worked on was lost through the land claims settlement process and the government later gave it to settlers.

Based on the Act, the federal government created the Smiley Commission which found that the Santa Ynez Indians were primarily living in a village around the Zanja de Cota Creek area on lands they had moved to around 1835 after the secularization of the missions. The commission determined that abundant evidence existed to validate the Chumash's long period of occupancy of the mission land, but the commission could not support creating a federal reservation through the legal theory of adverse possession because the Bishop's earlier petition stated that the Church had long considered the mission lands to be "owned" by the Chumash. The Chumash could not be considered to have been in adverse possession of the land - even though the previous Land Claims Commission denied their land claims.

Church lawsuit

The Smiley Commission developed a different approach. The federal government began negotiating with the Catholic Church to obtain federal trust lands for the Santa Ynez Chumash. Part of this scheme involved the Bishop of Monterey filing a lawsuit against individual Santa Ynez tribal members in a quiet title action. With U.S. government support through the approval of the local Indian agent, the Bishop commenced a quiet title claim. The action concerned about 11,500 acres of the Rancho Canada de los Pinos, or the College Rancho.

The action was necessary because, at least according to the position held by the Bishop in his petition to the Land Claims Commission, the Church actually held the lands around the mission in trust for the Chumash. The negotiations and quiet title action resulted in an agreement in which the Bishop would convey some land to the federal government for a reservation for the Santa Ynez Band of Chumash Mission Indians.

At various times, parcels of land ranging from 5 acres to 200 acres were proposed as the property to be deeded to the United States for the Santa Ynez Chumash. Each of these proposals represented areas that were significantly less than the original mission lands (held for the local Chumash), the Rancho Canada de los Pinos (the mission lands as reconfigured by the United States), and even the combined total of the Santa Ynez individual land grants.

Ultimately, what was transferred to the United States to be held in trust for the tribe was just 99 acres, a tiny fraction of the 11,500 acres of the Rancho Canada de los Pinos that had been that had been given up without Chumash consent.

Previous Land Consolidation/Acquisition Efforts of the Tribe

As noted, the Tribe was originally conveyed a mere 99 acres for use as a Reservation. In the 1970s, the Tribe acquired an additional 27 acres which was used for HUD housing. Since that time, the Tribe has purchased additional lands for inclusion in the Reservation. In 2003, approximately 12 acres were added to the Reservation when the Tribe's fee-to-trust acquisition was granted. The Tribe has a further fee-to-trust acquisition for 6.9 acres of land contiguous to the Reservation which was approved by the Department of Interior currently pending before the IBIA. The Tribe has additionally submitted an application for 6.6 acres of land contiguous to the Reservation.

In 2010, the Tribe was able to purchase the 1390 acre Camp 4 property from Fess Parker. The Camp Four property was once part of the lands of Mission Santa Ines and part of the area included within the Quiet Title Action. Thus, the Tribe has consistently purchased land within their historic territory and within the Tribal Consolidation Area.

Provisions of the Land Consolidation and Acquisition Plan

1. ***Goals.*** Consistent with its prior efforts, the Tribe is pursuing two overall land-related goals. First, to the extent feasible (both financially and otherwise), the Tribe wishes to provide a sufficient land base for the Tribe to house its members, economic development and tribal government activities. Second, the Tribe wishes to promote the highest and best use of any existing and future trust land base by assuring that Tribal goals such as cultural preservation are met while at the same time still providing land for housing, economic development and other governmental functions.
2. ***Need to Set Priorities.*** Due to the high cost of land acquisition in the Consolidation and Acquisition area, the Tribe must prioritize its land acquisitions.
 - a. ***Priorities.*** With the financial and other constraints in mind, as well as the Tribe's goals and prior acquisitions, the Tribe's priority schedule for acquisition of land within the Tribal Consolidation Area will be:

CATEGORY 1 - Highest Priority: Acquisition of parcels which can be used for tribal housing, economic development and tribal governmental facilities.

CATEGORY 2 - High Priority: Acquisition of parcels contiguous to existing parcels of tribal trust land that have the potential of being used for projects of importance designated by the Tribe.

CATEGORY 3 - Medium Priority: Acquisition of parcels not contiguous to tribal trust lands, but having development potential.

CATEGORY 4 - Low Priority: Acquisition of parcels not contiguous to tribal trust lands for the purpose of increasing the tribal trust land base or of public domain allotments for purposes of increasing the tribal trust land base, exchange or mitigation.

3. *Procedure.* The Business Committee will review each potential land acquisition and determine into which category it falls. Depending on the categorization, and subject to the availability of funds, the Tribe will then determine whether to acquire the parcel or not.

Exhibit A

