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15 Attorneys for Plaintiffs,
16 PRESERVATION OF LOS OLIVOS and
17 PRESERVATION OF SANTA YNEZ

18 UNITED STATES DISTRICT COURT
19 CENTRAL DISTRICT OF CALIFORNIA
20 WESTERN DIVISION

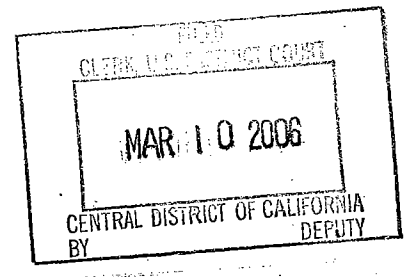
21 PRESERVATION OF LOS OLIVOS and
22 PRESERVATION OF SANTA YNEZ,

23 Plaintiffs,

24 v.

25 THE UNITED STATES DEPARTMENT
26 OF THE INTERIOR, 1849 C Street,
27 N.W., Washington, D.C. 20240;
28 SECRETARY GALE A. NORTON, in
her official capacity, 1849 C Street, N.W.,
Washington, D.C. 20240; BUREAU OF
INDIAN AFFAIRS, by and through
Pacific Regional Director, CLAY
GREGORY, in his official capacity, 2800
Cottage Way, Sacramento, CA 95825;
and the INTERIOR BOARD OF INDIAN
APPEALS, 801 N. Quincy Street, Suite
300, Arlington, VA 22203,

Defendants.



■ CVU6-1502 AHM
(CTA)

CASE NO.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

[28 U.S.C. §1331; 5 U.S.C. § 500 *et seq.*,
28 U.S.C. § 2201 *et seq.*]

I.

SUMMARY OF COMPLAINT

1
2
3 1. Plaintiffs Preservation of Los Olivos and Preservation of Santa Ynez
4 (collectively, "Plaintiffs") bring this action seeking judicial review of a final
5 administrative decision issued by the Interior Board of Indian Appeals (hereinafter,
6 "IBIA") of the United States Department of the Interior on February 3, 2006.
7 *See* Order Dismissing Appeal, February 3, 2006, Docket No. IBIA 05-50-A, attached
8 hereto as Exhibit A (hereinafter, "IBIA Order"). That administrative decision denied
9 Plaintiffs standing to appeal the January 14, 2005 decision of the Pacific Regional
10 Director of the Bureau of Indian Affairs (hereinafter, "BIA") approving the acceptance
11 by the United States of a 6.9-acre parcel of land in Santa Barbara County, California,
12 (hereinafter, the "Property") in trust for the Santa Ynez Band of Chumash Mission
13 Indians of the Santa Ynez Reservation, California (hereinafter, "Tribe"). *See* Notice
14 of Decision, January 14, 2005, attached hereto as Exhibit B (describing the real
15 property to be taken into trust) (hereinafter, "BIA Decision"). The Property is
16 adjacent to the Tribe's land, where the Tribe has developed a 190,000 square foot
17 Class III casino, which opened in August 2003, and a hotel and spa, which opened in
18 July 2004. The BIA publicly announced on February 17, 2006 that it has made a final
19 agency determination to take the Property into trust. *See* Public Notice, attached
20 hereto as Exhibit C.

21 2. Although Plaintiffs alleged significant environmental, aesthetic, and
22 economic harms in their administrative appeal of the BIA Decision taking the Property
23 into trust, the IBIA wrongly deprived the Plaintiffs of their right to be heard on the
24 merits by dismissing their appeal for lack of standing. The IBIA acted arbitrarily and
25 capriciously in violation of the Administrative Procedure Act ("APA") because
26 Plaintiffs possess standing under both the National Environmental Policy Act
27 ("NEPA"), 42 U.S.C. §§ 4321-4370f, and 25 U.S.C. § 465 and its implementing
28 regulations. In dismissing Plaintiffs' appeal, the IBIA disregarded legal precedent and

1 Regional Director, Clay Gregory. The Department of the Interior and Secretary of the
2 Interior Gale A. Norton are named as defendants in this action as a result of the
3 actions and decisions of the Department of the Interior's subdivisions, the IBIA and
4 the BIA, through its Pacific Regional Director, Clay Gregory.

5 8. Service of process will be effected on the Department of the Interior, the
6 Secretary of the Interior Gale A. Norton, the BIA, and the IBIA by delivering through
7 the means indicated a copy of the summons and complaint to each of the following:
8 (1) the United States Attorney or the Assistant United States Attorney for the Central
9 District of California by personal delivery; (2) the United States Attorney General
10 Alberto Gonzalez in Washington, D.C. by certified mail; (3) the Pacific Regional
11 Director of the BIA, Clay Gregory, by personal delivery; (4) Gale A. Norton,
12 Secretary of the Interior, by personal delivery; (5) the United States Department of the
13 Interior by personal delivery; and (6) the IBIA by personal delivery.

14 9. Defendants, and their successors in office, are the parties responsible for
15 both the creation and enforcement of the IBIA Order at issue in this lawsuit.

16 III.

17 JURISDICTION AND VENUE

18 10. This Court has jurisdiction under 28 U.S.C. § 1331 (federal question),
19 5 U.S.C. § 500 *et seq.* (the APA), and 28 U.S.C. § 2201 *et seq.* (the Declaratory
20 Judgment Act). The IBIA Order constitutes final agency action. *See* 43 C.F.R.
21 § 4.315(c). No further agency appeal is available, and final agency action amenable to
22 judicial review occurred when the IBIA Order was entered against Plaintiffs and the
23 BIA Decision was published in the newspaper the *Santa Barbara News-Press* on
24 Friday, February 17, 2006. *See* Exhibit C. The United States has waived its sovereign
25 immunity from suit under 5 U.S.C. § 702 and 28 U.S.C. § 2209(a).

26 11. Venue is properly placed under 28 U.S.C. § 1391(e) in that a substantial
27 part of the events or omissions giving rise to the claim occurred in the Central District
28 of California and the property that is the subject of the action is situated there.

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IV.

PROCEDURAL BACKGROUND

12. The Tribe filed an application with the BIA on November 8, 2000 and a revised application on May 6, 2002 to have the Property placed into trust for a commercial retail facility, parking lot, museum and cultural center, and community/commemorative park. This Property is just one component of the Tribe's ongoing plans to expand commercial development and casino gaming in the Santa Ynez Valley. The Tribe already has a Class III casino, hotel and spa, and parking lots located on its land.

13. On January 14, 2005, the BIA issued the BIA Decision, which granted the Tribe's application to place the Property into trust pursuant to 25 U.S.C. § 465 and 25 C.F.R. §§ 151.3, 151.10. *See* Exhibit B (Notice of Decision).

14. On February 22, 2005, Plaintiffs filed a timely appeal of the BIA Decision with the IBIA pursuant to 43 C.F.R. §§ 4.310-4.340. *See* Notice of Appeal, February 22, 2005, attached hereto as Exhibit D. The appeal requested that the IBIA vacate the BIA Decision to take the Property into trust and remand the matter to the Pacific Regional Director for consideration of additional information and a reasonable determination based on the record. The grounds for appeal were: (1) the BIA Decision failed to comply with NEPA; (2) the BIA failed to consider all facts under 25 C.F.R. § 151.10; (3) the BIA failed to address potential gaming uses of the land; and (4) the BIA Decision was arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with the law, because the BIA did not act in accordance with 25 C.F.R. § 151.10 and did not have a rational basis for acquiring the Property in trust.

15. Plaintiffs alleged in their Notice of Appeal that the BIA based its decision to acquire the Property into trust on an inadequate Environmental Assessment ("EA") under NEPA. The EA was prepared by the Tribe and subsequently adopted by the BIA. Plaintiffs further alleged that the EA failed to consider the cumulative

1 environmental impact of this trust acquisition in combination with other commercial
2 developments by the Tribe and others in the community, and also failed to assess the
3 trust acquisition's impact on the Valley's water supply. In so doing, the BIA was able
4 to avoid a finding that a more detailed and comprehensive Environmental Impact
5 Statement ("EIS") was required.

6 16. On May 5, 2005, the Regional Director of the BIA filed a motion to
7 dismiss Plaintiffs' appeal with the IBIA on the ground that Plaintiffs lacked standing
8 to appeal the BIA Decision.

9 17. On August 11, 2005, Plaintiffs filed a response to the Regional Director's
10 Motion to Dismiss. In their response, Plaintiffs asserted, *inter alia*, that (1) they
11 satisfied the standing requirements set forth in 25 C.F.R. § 2.3; (2) Plaintiffs have
12 standing under *Lujan v. Defenders of Wildlife*, 504 U.S. 555; 119 L. Ed. 2d 351;
13 112 S. Ct. 2130 (1992); (3) Plaintiffs are within the zone of interests of 28 U.S.C.
14 § 465; (4) Plaintiffs have standing to raise issues regarding violations of NEPA and
15 other environmental statutes and regulations referenced in the BIA Decision; and
16 (5) Plaintiffs also have standing to raise these issues under Section 465 and 25 C.F.R.
17 § 151.10, which require the BIA to take into account these issues when evaluating a
18 fee-to-trust application.

19 18. On February 3, 2006, the IBIA dismissed Plaintiffs' appeal on the ground
20 that Plaintiffs lacked standing. The IBIA held that only two declarants¹ had satisfied
21 the requirements of Article III constitutional standing because they were able to show
22 direct injury to their personal economic interests caused by the Tribe's proposed
23 development of the Property. The IBIA concluded, however, that neither of these
24

25
26 ¹ The IBIA found that Jon Bowen, a member of Preservation of Los Olivos and
27 President of Preservation of Santa Ynez, had established Article III standing. The
28 IBIA also found that Michele Hinrichs had established Article III standing, but
she is a member of an organization called Santa Ynez Valley Concerned Citizens,
not Preservation of Los Olivos or Preservation of Santa Ynez.

1 individuals had prudential standing because their private economic interests were
2 unrelated to and inconsistent with 25 C.F.R. § 151.10, and thus were not within the
3 zone of interests protected by the regulations. Plaintiffs now appeal this decision. *See*
4 Exhibit A.

5 V.

6 STATUTORY AND REGULATORY FRAMEWORK

7 19. The APA authorizes this Court to review final agency action and
8 mandates that the Court hold unlawful and set aside such action, findings, and
9 conclusions when they are arbitrary and capricious, an abuse of discretion, or
10 otherwise not in accordance with the law; contrary to constitutional right, power,
11 privilege, or immunity; in excess of statutory jurisdiction, authority, or limitations, or
12 short of statutory right; without observance of procedure required by law; or
13 unsupported by substantial evidence. 5 U.S.C. § 706(2)(A)-(E)

14 20. Federal law permits land to be taken into trust for the benefit of Native
15 Americans in certain circumstances. Pursuant to 25 U.S.C. § 465, “[t]he Secretary of
16 the Interior is . . . authorized, in [her] discretion, to acquire, through purchase,
17 relinquishment, gift, exchange, or assignment, any interest in lands, water rights, or
18 surface rights to lands, within or without existing reservations, including trust or
19 otherwise restricted allotments, whether the allottee be living or deceased, for the
20 purpose of providing land for Indians.” The regulations interpreting Section 465 state
21 in relevant part:

22 The Secretary will consider the following criteria in evaluating requests
23 for the acquisition of land in trust status when the land is located within
24 or contiguous to an Indian reservation, and the acquisition is not
25 mandated: . . . (b) The need of the individual Indian or the tribe for
26 additional land; (c) The purposes for which the land will be
27 used; . . . (e) If the land to be acquired is in unrestricted fee status, the
28 impact on the State and its political subdivisions resulting from the
removal of the land from the tax rolls; (f) Jurisdictional problems and
potential conflicts of land use which may arise; and (g) If the land to be
acquired is in fee status, whether the Bureau of Indian Affairs is equipped

1 to discharge the additional responsibilities resulting from the acquisition
2 of the land in trust status.

3 25 C.F.R. § 151.10. The regulations further require consideration of “[t]he extent to
4 which the applicant has provided information that allows the Secretary to comply with
5 516 DM 6, appendix 4, National Environmental Policy Act Revised Implementing
6 Procedures, and 602 DM 2, Land Acquisitions: Hazardous Substances
7 Determinations.” 25 C.F.R. § 151.10(h); *see also* Department of the Interior,
8 Departmental Manual, 516 DM 6, attached hereto as Exhibit E; Department of the
9 Interior, Departmental Manual, 602 DM 2, attached hereto as Exhibit F.

10 21. NEPA requires that “all agencies of the Federal Government shall
11 . . . include in every recommendation or report on . . . major Federal actions
12 significantly affecting the quality of the human environment, a detailed statement by
13 the responsible official.” 42 U.S.C. § 4332(2)(C). When enacting NEPA, Congress

14 recogniz[ed] the profound impact of man’s activity on the interrelations
15 of all components of the natural environment, particularly the profound
16 influences of population growth, high-density urbanization, industrial
17 expansion, resource exploitation, and new and expanding technological
18 advances and recogniz[ed] further the critical importance of restoring and
19 maintaining environmental quality to the overall welfare and
20 development of man, [and] declare[d] that it is the continuing policy of
21 the Federal Government, in cooperation with State and local
22 governments, and other concerned public and private organizations, to
23 use all practicable means and measures, including financial and technical
24 assistance, in a manner calculated to foster and promote the general
25 welfare, to create and maintain conditions under which man and nature
26 can exist in productive harmony, and fulfill the social, economic, and
27 other requirements of present and future generations of Americans.

28 42 U.S.C. § 4331(a).

22. Plaintiffs’ interests in the environmental and economic well-being of the
Santa Ynez Valley are among the interests to be considered under 25 C.F.R.
§ 151.10(f), 151.10(h) before land is placed into trust. *See, e.g., TOMAC v. Norton*,
193 F. Supp. 2d 182 (D.D.C. 2002), *aff’d*, 433 F.3d 852 (D.C. Cir. 2006) (holding that

1 a community group had standing to challenge the BIA's decision to take land into
2 trust for the construction of a casino under the Indian Gaming Regulatory Act and 25
3 C.F.R. § 151.10(f), (h)); *see also Citizens Exposing Truth About Casinos v. Norton*,
4 2004 U.S. Dist. LEXIS 27498, at *6 & n.3 (D.D.C. Apr. 23, 2004) (holding that a
5 citizen's group had standing under the Indian Reorganization Act, found at 25 U.S.C.
6 §§ 461-475, to challenge a trust acquisition because the Act's implementing
7 regulations provide for consideration of land use conflicts and NEPA requirements).
8 *Cf. City of Sherrill v. Oneida Indian Nation*, 544 U.S. 197; 125 S. Ct. 1478, 1493;
9 161 L. Ed. 2d 386 (2005) ("If [the Tribe] may unilaterally reassert sovereign control
10 and remove these parcels from the local tax rolls, little would prevent the Tribe from
11 initiating a new generation of litigation to free the parcels from local zoning or other
12 regulatory controls that protect all landowners in the area. Recognizing these practical
13 concerns, Congress has provided a mechanism for the acquisition of lands for tribal
14 communities that takes account of the interests of others with stakes in the area's
15 governance and well being.").

16 VI.

17 PLAINTIFFS HAVE STANDING TO APPEAL THE BIA DECISION

18 23. For Article III standing, Plaintiffs must demonstrate that (1) they suffered
19 an injury in fact that is (a) concrete and particularized and (b) actual or imminent;
20 (2) the injury is fairly traceable to the challenged action of the defendant; and (3) the
21 injury will be redressed by a favorable decision. *See City of Sausalito v. O'Neil*,
22 386 F.3d 1186, 1196-97 (9th Cir. 2005). For prudential standing, the Plaintiffs "must
23 establish that the injury [they] complain[] of . . . falls within the 'zone of interests'
24 sought to be protected by the statutory provision whose violation forms the legal basis
25 for his complaint." *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 883; 111 L. Ed. 2d
26 695; 110 S. Ct. 3177 (1990).

27 24. An organization has standing to sue on behalf of its members if "(a) its
28 members would otherwise have standing to sue in their own right; (b) the interests it

1 seeks to protect are germane to the organization's purpose; and (c) neither the claim
2 asserted nor the relief requested requires the participation of individual members in
3 the lawsuit." *Hunt v. Wash. State Apple Adver. Comm'n*, 432 U.S. 333, 343; 53 L. Ed.
4 2d 383; 97 S. Ct. 2434 (1977).

5 **A. Plaintiffs Have Established That They Have Suffered An Injury In**
6 **Fact.**

7 25. In support of their response to the Regional Director's Motion to Dismiss,
8 Plaintiffs submitted several declarations from their members in which each member
9 alleged how he or she was personally injured by the taking of the Property into trust.
10 All of the declarants live within 6 miles of the Property. The following statements
11 were made in these declarations:

12 a. Doug Herthel stated in his declaration that a recent report found
13 that MTBE contamination from a neighboring gasoline station has spread to
14 the Property to be taken into trust and thus is threatening the quality of the
15 Santa Ynez Valley's groundwater

16 b. Kathryn Cleary, Zoie Carter, Michael Byrne, Michele Griffoul,
17 Keith Saarloos, and Chris Reinscheild stated in their declarations that MTBE
18 contamination from a neighboring gasoline station may have spread to the
19 Property to be taken into trust and thus is threatening the quality of the Santa
20 Ynez Valley's groundwater;

21 c. Doug Herthel and Kathryn Cleary stated in their declarations that
22 the Tribe has a history of disregarding environmental issues by, for example,
23 using the creek that runs through the Tribe's land for dumping cars and
24 trash;

25 d. Kathryn Cleary, Zoie Carter, Michael Byrne, Michele Griffoul,
26 Keith Saarloos, Chris Reinscheild, Jon Bowen, and Ed Hammer stated in
27 their declarations that the trust acquisition will create more traffic, air
28

1 pollution, and crime – all of which have already increased significantly as a
2 result of the opening of the Tribe’s casino;

3 e. Jon Bowen stated in his declaration that the proposed development
4 by the Tribe does not comply with the community’s architectural standards;

5 f. Doug Herthel, Kathryn Cleary, Zoie Carter, Michael Byrne,
6 Michele Griffoul, Keith Saarloos, Chris Reinscheid, Jon Bowen, and Ed
7 Hammer stated in their declarations that the taking of this Property into trust
8 further increases their tax burdens because the Tribe’s development will
9 place additional demands on the community’s public services without
10 generating tax revenue to cover the increased costs; and

11 g. Jon Bowen and Ed Hammer stated in their declarations that the
12 ability of the tribe to operate its commercial establishments free of sales and
13 property taxes creates an unfair competitive advantage against local business
14 owners, like themselves, who must pay such taxes.

15 26. These declarations allege facts sufficient to establish standing under
16 NEPA and Section 465 and its implementing regulations by demonstrating that
17 Plaintiffs have suffered environmental, aesthetic, and economic injuries, as well as an
18 injury to their safety caused by the taking of the Property into trust.

19 27. The IBIA acted arbitrarily and capriciously under the APA when it found
20 that Plaintiffs’ members did not offer evidence that MTBE contamination had spread
21 to tribal land. *See* IBIA Order, 42 IBIA 195. In fact, Doug Herthel alleged that a
22 recent report disclosed that “a massive underground plume of gasoline containing
23 MTBE is spreading deep under the properties the tribe seeks to acquire into trust.”
24 Several other declarants alleged that the contamination may have spread to the
25 Property to be taken into trust. Such contamination, if not remediated, constitutes
26 injury in fact because the contamination threatens the Valley’s (and thus Plaintiffs’)
27 groundwater supply. NEPA and 25 C.F.R. § 151.10(h) require the Secretary of the
28 Interior to consider whether the land is contaminated before taking it into trust.

1 Contaminated land should not be taken into trust until remediation efforts have been
2 undertaken. *See* Exhibit F. Defendants, however, have ignored the evidence
3 submitted by Plaintiffs that the contamination has spread to the Property to be taken
4 into trust.

5 28. Plaintiffs alleged in their response that the BIA should have conducted an
6 EIS to analyze the effect that taking the Property into trust would have on the Valley's
7 water supply. In light of the MTBE contamination from the gasoline station, the BIA
8 should have required groundwater sampling or the testing of wells on the Property.
9 This EIS should also have analyzed the cumulative impact of the proposed
10 commercial development of this Property together with other commercial
11 developments in the surrounding area. Under NEPA, "a cognizable procedural injury
12 exists when a plaintiff alleges that a proper EIS has not been prepared under the
13 National Environmental Policy Act when the plaintiff also alleges a 'concrete' interest
14 – such as an aesthetic or recreational interest – that is threatened by the proposed
15 action." *City of Sausalito*, 386 F.3d at 1197. Thus, Plaintiffs' allegation that the BIA
16 did not prepare an EIS as required by NEPA establishes an injury in fact.

17 29. In addition, the IBIA acted arbitrarily and capriciously under the APA
18 when it found that Plaintiffs' members did not have standing under NEPA. *See* IBIA
19 Order, 42 IBIA 194. The increased traffic, pollution, and crime that Plaintiffs'
20 members have suffered and will suffer from the proposed development establish the
21 element of injury in fact under NEPA. These injuries also provide a basis for standing
22 under Section 465 and 25 C.F.R. § 151.10, which require the BIA to consider the
23 community interests' before taking land into trust. Likewise, the economic injuries of
24 Plaintiffs' members resulting from their increased tax burdens and the unfair
25 competitive advantaged posed by the Tribe's businesses sets forth an independent
26 basis for injury in fact under Section 465 and 25 C.F.R. § 151.10.

1 **B. Plaintiffs Have Satisfied The Elements Of Causation And**
2 **Redressability.**

3 30. The BIA Decision ordering the taking of the Property into trust will cause
4 injury to Plaintiffs' members. Once the Property goes into trust, the Tribe will not
5 have to comply with any of the state and local laws and regulations addressing
6 environmental, aesthetic, zoning, and traffic concerns, and will not have to contribute
7 to the taxes required to fund the additional public services necessitated by the Tribe's
8 development. If the Property is not taken into trust, the Tribe will have to comply
9 with these state and local laws and regulations, and will be responsible for paying
10 state and local taxes.

11 31. The relief sought by Plaintiffs will prevent the Property from being taken
12 into trust, and thus being removed from the jurisdiction of state and local government.
13 This remedy will redress the injury inflicted on Plaintiffs' members because – if the
14 Property is not taken into trust – the Tribe will have to comply with the state and local
15 environmental, zoning, and tax requirements that protect the interests of Plaintiffs'
16 members.

17 **C. Plaintiffs Have Prudential Standing.**

18 32. The IBIA acted arbitrarily and capriciously when it found Plaintiffs'
19 members did not have prudential standing. *See* IBIA Order, 42 IBIA 205. Plaintiffs'
20 members fall within the zone of interests of 25 C.F.R. § 151.10(f) (land use conflicts)
21 and 25 C.F.R. § 151.10(h) (NEPA requirements), which require the BIA to consider
22 the community's interests when deciding whether to take a property into trust. In
23 addition, Plaintiffs' members fall within the zone of interests of NEPA because their
24 interests in protecting the environmental quality of the Santa Ynez Valley are
25 consistent with NEPA's purposes. *See Douglas County v. Babbitt*, 48 F.3d 1495,
26 1499 (9th Cir. 1995).

27 33. Plaintiffs have standing under the APA because (1) the IBIA Order
28 denying Plaintiffs standing constitutes final agency action adversely affecting

1 Plaintiffs; and (2) as a result of the IBIA Order, Plaintiffs suffered a legal wrong and
2 their injury falls within the zone of interests of NEPA as well as Section 465 and its
3 implementing regulations. *See Ocean Advocates v. United States Army Corps of*
4 *Eng'rs*, 402 F.3d 846, 861-62 (9th Cir. 2005)

5 **D. Plaintiffs Have Associational Standing.**

6 34. Plaintiffs have standing to bring this Complaint on behalf of their
7 members because (1) Plaintiffs' members have standing; (2) Plaintiffs' mission of
8 protecting the rural character, water quality, and air quality of the Santa Ynez Valley
9 is germane to their members' interests; and (3) there is no reason for the members to
10 be individually joined to this litigation.

11 **VII.**

12 **FIRST CAUSE OF ACTION:**

13 **VIOLATION OF THE APA WITH RESPECT TO THE IBIA'S**
14 **FINDING THAT PLAINTIFFS LACK STANDING**

15 35. Plaintiffs reallege and incorporate herein by reference all foregoing
16 paragraphs.

17 36. Title 5 U.S.C. § 702 provides that each authority of the government of the
18 United States is subject to judicial review. Section 706 provides that, in all cases,
19 agency action must be set aside if the action was "arbitrary, capricious, an abuse of
20 discretion, or otherwise not in accordance with law"; "contrary to constitutional right,
21 power, privilege, or immunity"; "in excess of statutory jurisdiction, authority, or
22 limitations, or short of statutory right"; "without observance of procedure required by
23 law"; or "unsupported by substantial evidence." Agencies must maintain a record in
24 support of their action, and there must be evidence in that record to support the agency
25 action.

26 37. The IBIA's decision that Plaintiffs lacked standing was arbitrary and
27 capricious and an abuse of discretion and also failed to meet statutory, procedural, or
28 constitutional requirements because the IBIA improperly decided that Plaintiffs failed

1 to allege Article III and prudential standing under the National Environment Policy
2 Act and/or 25 U.S.C. § 465 and its implementing regulations found at 25 C.F.R.
3 § 151.10.

4 38. As a result of the IBIA's arbitrary and capricious decision, Plaintiffs have
5 suffered damages that will be permanent and continuous if the BIA is allowed to place
6 the Property into trust without affording Plaintiffs the opportunity to have their appeal
7 heard on the merits.

8 **VIII.**

9 **SECOND CAUSE OF ACTION:**

10 **DECLARATORY AND INJUNCTIVE RELIEF,**

11 **28 U.S.C. §§ 2201 - 2202**

12 39. Plaintiffs reallege and incorporate herein by reference all foregoing
13 paragraphs.

14 40. An actual controversy has arisen and now exists between Plaintiffs and
15 Defendants regarding their respective rights, duties, and obligations because Plaintiffs
16 contend that Defendants have violated the APA and that this unlawful agency action
17 has injured Plaintiffs by depriving them of their right to pursue an appeal before the
18 IBIA.

19 41. Plaintiffs desire a judicial determination that Plaintiffs have standing to
20 pursue their appeal of the BIA Decision on the merits before the IBIA.

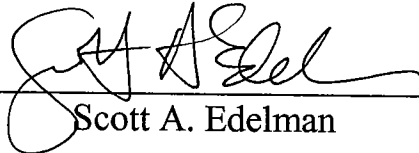
21 42. Such a declaration is necessary and appropriate at this time so that the
22 parties may ascertain their rights and duties with respect to each other.

23 43. Plaintiffs have been greatly and irreparably harmed by Defendants'
24 violations of the APA, alleged herein, and unless Defendants are enjoined by this
25 Court from taking the Property into trust pending consideration of Plaintiffs' appeal of
26 the BIA Decision on the merits, Defendants will continue to violate Plaintiffs' rights
27 and will cause Plaintiffs further irreparable harm.

- 1 3. That Plaintiffs be awarded their costs and attorneys' fees incurred in
2 connection with the institution and prosecution of this action as this
3 Court may deem just and proper; and
4 4. That Plaintiffs be awarded such other relief as this Court may deem just
5 and proper.

6
7 DATED: March 10, 2006

THEODORE B. OLSON
SCOTT A. EDELMAN
GIBSON, DUNN & CRUTCHER LLP

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9
10
11 By:  _____
 Scott A. Edelman

12
13 Attorneys for Plaintiffs,
14 PRESERVATION OF LOS OLIVOS and
 PRESERVATION OF SANTA YNEZ

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