United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
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ARLINGTON, VA 22203

COUNTY OF SANTA BARBARA, CALIFORNIA; NO MORE SLOTS; NEIGHBORHOOD DEFENSE LEAGUE OF CALIFORNIA; NANCY CRAWFORD-HALL; CONCERNED CITIZENS OF THE SANTA YNEZ VALLEY, MEADOWLARK RANCHES ASSOCIATION, and SANTA YNEZ VALLEY ASSOCIATION OF REALTORS; PRESERVATION OF LOS OLIVOS and PRESERVATION OF SANTA YNEZ; SAVE THE VALLEY PLAN; W.E. WATCH, INC.; SANTA YNEZ RANCHO ESTATES MUTUAL WATER COMPANY, INC.; MARY KIANI, TRUSTEE, KIANI FAMILY REMAINDER TRUST; and SANTA YNEZ RIVER WATER CONSERVATION DISTRICT, IMPROVEMENT DISTRICT NO. 1 Appellants, v. PACIFIC REGIONAL DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellee.	)	Order Vacating Decision and Dismissing Case as Moot Docket Nos. IBIA 14-001 14-003 14-004 14-005 14-006 14-007 14-009 14-010 14-018 14-019 14-020 October 24, 2013

Appellants seek review of a June 17, 2013, decision (Decision) of the Pacific Regional Director (Regional Director), Bureau of Indian Affairs (BIA) approving a tribal Land Consolidation and Acquisition Plan (Plan) proposed by the Santa Ynez Band of Chumash Indians (Tribe). The Board now dismisses this case as moot because the Tribe has withdrawn its Plan.

Background

The Tribe submitted a "Land Consolidation and Acquisition Plan" to the Regional Director for approval under BIA's land-into-trust regulations at 25 C.F.R. §§ 151.2(h) (definition of "tribal consolidation area")[1] and 151.3(a)(1) (land acquisition policy).[2] The Plan identifies an approximately 11,500-acre area—which purportedly "was part of the Tribe's ancestral territory and comprised most of its historic territory," and which is outside the Tribe's roughly 137-acre current reservation—as the Tribe's area of focus for possible future trust acquisitions. Plan at 2-3, 8-9 & Ex. A (map). The Plan construes § 151.3(a)(1) as providing 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." Plan at 2.

The Regional Director approved the Plan pursuant to §§ 151.2(h) and 151.3(a)(1). *See* Decision. The Decision states that "[a]ll 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." *Id.* Thus, BIA's approval of the Plan did not signify its evaluation and approval of any application to place land into trust. *See id.* Through a letter dated June 19, 2013, the Acting Regional Director notified the Tribe that the Plan had been approved. It appears that BIA neither sought public comment on the Plan nor issued a public notice of the Decision.

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[1] Section 151.2(h) defines a tribal consolidation area as "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."

[2] Section 151.3(a)(1) states that, "Subject to the provisions contained in the acts of Congress which authorize land acquisitions, land may be acquired for a tribe in trust status: (1) When the property is located within the exterior boundaries of the tribe's reservation or adjacent thereto, or within a tribal consolidation area." For the sake of completeness, we note that under the policy, land may also be acquired in trust for a tribe "(2) [w]hen the tribe already owns an interest in the land; or (3) [w]hen the Secretary determines that the acquisition is necessary to facilitate tribal self-determination, economic development, or Indian housing." 25 C.F.R. § 151.3(a)(2)-(3).

Numerous parties filed appeals of the Decision, alleging procedural and substantive errors.[3] The Board consolidates all of the appeals and now dismisses this case as moot. After several of the appeals were filed, the Tribe sent to the Regional Director, with a copy to the Board, a letter in which the Tribe withdrew its Plan without prejudice. *See* Letter from Tribal Chairman to Regional Director, Oct. 11, 2013. The Tribe also requested that BIA "dismiss any appeals to such [tribal consolidation area] without prejudice." *Id.*

Discussion

The Board, while recognizing that it is not bound by the case-or-controversy requirement set forth in the U.S. Constitution, art. III, § 2, has in the interest of administrative economy consistently applied the doctrine of mootness. *See Pueblo of Tesuque v. Acting Southwest Regional Director*, 40 IBIA 273, 274 (2005) (citing *Estate of Peshlakai v. Area Director, Navajo Area Office*, 15 IBIA 24, 32-33 (1986)). "Mootness may arise in various contexts, but each is based on the requirement that an active case or controversy be present at all stages of litigation." *Pueblo of Tesuque*, 40 IBIA at 274 (citations omitted).

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[3] On September 26 the Board consolidated six appeals, after which five more were received. The appeals have been docketed as follows: County of Santa Barbara, California (Dkt. No. IBIA 14-001); No More Slots (Dkt. No. IBIA 14-003); Neighborhood Defense League of California (Dkt. No. IBIA 14-004); Nancy Crawford-Hall (Dkt. No. IBIA 14-005); Concerned Citizens of the Santa Ynez Valley, Meadowlark Ranches Association, and Santa Ynez Valley Association of Realtors (Dkt. No. IBIA 14-006); Preservation of Los Olivos and Preservation of Santa Ynez (Dkt. No. IBIA 14-007); Save the Valley Plan (Dkt. No. IBIA 14-009); W.E. Watch, Inc. (Dkt. No. IBIA 14-010); Santa Ynez Rancho Estates Mutual Water Company, Inc. (Dkt. No. IBIA 14-018); Mary Kiani, Trustee, "Kiani Family Rem[a]inder Trust" (Dkt. No. IBIA 14-019); and Santa Ynez River Water Conservation District, Improvement District No. 1 (Dkt. No. IBIA 14-020).

The Board received entries of appearance from the following parties: Charles Grimm, Grimm Investments, LLC, Michael Sinclair, Lynn Sinclair, Paul Skinner, Robin Hunt, Jr., Vicki Schuman Hunt, Thomas J. Barrack, Donald Petroni, Ann Petroni, Lawrence Grassini, Kathleen S. Grassini, Grassini Vineyard, LLC, Tom Stull, Deborah Stull, Aspen Properties, Michael Focht, Sandra Focht, Gerald Thomas, Janet Thomas, Priscilla Tamkin, James Vogelzang, Mary Beth Vogelzang, Julie McGinley, Jack McGinley, Shawn Addison, Antoinette Addison, Kentucky West, Donald Shackelford, Kim Shackelford, Santa Barbara Vineyards, LLC, Roger K. Bower, Joe E. Kiani, Mary Kiani, Santa Ynez River Water Conservation District, Improvement District No. 1, and the Tribe.

Additionally, we received a letter from Santa Ynez Valley Alliance providing "comments" in opposition to the Decision.

The Board may well dismiss an appeal as moot when, as a result of a change in the circumstances that gave rise to the appeal, the Board determines that "nothing turns on its outcome." *Id.* (citation omitted). In *Pueblo of Tesuque*, the Board dismissed as moot an appeal, the aim of which was to terminate a utility right-of-way (ROW), when the utility informed the Board that it no longer intended to use the ROW. *Id.* at 274-75. The Board explained that, "whether or not the Regional Director's decision was correct or incorrect, the active case or controversy over [the utility's] use of Pueblo lands no longer exists." *Id.* at 275. In accordance with *Pueblo of Tesuque*, in *Hamaatsa, Inc. v. Southwest Regional Director*, 55 IBIA 132, 134-35 (2012), we dismissed an appeal of a regional director's decision to acquire land in trust as moot when the tribe withdrew its application.

Now that the Tribe has withdrawn the Plan, the Regional Director's decision to approve the Plan has lost whatever significance, if any, it might otherwise have carried. We conclude that nothing may now turn on the outcome of a decision by the Board on Appellants' appeal of the Regional Director's decision. Accordingly, we dismiss this case as moot.

We recognize the possibility that issues could re-emerge in a new controversy. But that does not mean that the original controversy is not moot. Appellants' filing of their appeals precluded the Decision from taking effect, *see* 25 C.F.R. § 2.6, and consequently should the Tribe resubmit its original Plan, or submit a new plan for approval, BIA must consider the situation with a "clean slate," *Hamaatsa*, 55 IBIA at 135, without regard for the Decision. An order of vacatur is therefore unnecessary as a matter of law. *See id.* Nevertheless, in the interest of clarity and because parties sometimes seek to attach continuing significance to a moot decision, we vacate the Regional Director's decision. *See id.* (citing *Pueblo of Tesuque*, 40 IBIA at 275; *Paul Spicer v. Eastern Oklahoma Regional Director*, 50 IBIA 328, 333 (2009)).

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board dockets the appeals, vacates the Regional Director's June 17, 2013, decision, and dismisses this case as moot.

I concur:

Thomas A. Blaser
Administrative Judge

Steven K. Linscheid
Chief Administrative Judge