

1 Santa Ynez Valley Concerned Citizens
2 G.B. Shepherd
3 P.O. Box 244
4 Santa Ynez, CA 93460

Meadowlark Ranches Assn.
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Santa Ynez, CA 93460

3 Santa Ynez Valley Association of Realtors
4 Sharon Currie, President
5 1623 Mission Dr. #2
6 Solvang, CA 93463

6 **UNITED STATES DEPARTMENT OF THE INTERIOR**

7 **OFFICE OF HEARINGS AND APPEALS**

8 **INTERIOR BOARD OF INDIAN APPEALS**

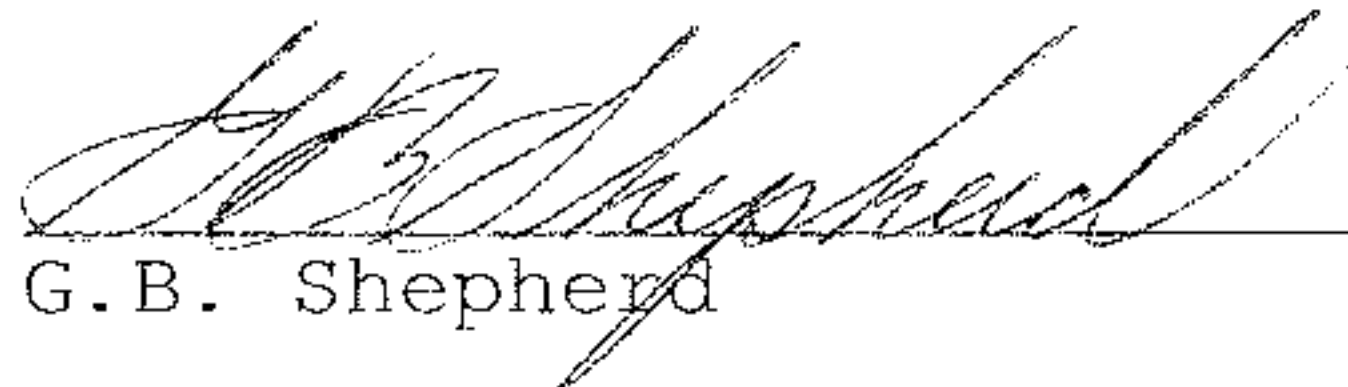
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11 IN RE: JUNE 17, 2013 DECISION BY) Docket No. _____
12)
13 PACIFIC REGIONAL DIRECTOR TO APPROVE) [not yet assigned]
14)
15 A LAND CONSOLIDATION AND ACQUISITION) NOTICE OF APPEAL
16)
17 PLAN FOR THE SANTA YNEZ BAND OF)
18)
19 CHUMASH INDIANS)
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18 Pursuant to 25 C.F.C. part 2 and 25 C.F.R. part 4 the
19 Appellants herein, Concerned Citizens of Santa Ynez, an
20 unincorporated association of several hundred residents of
21 the Santa Ynez Valley, Meadowlark Ranches Association, an
22 unincorporated association of 54 landowners whose properties
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NOTICE OF APPEAL

1 have been encircled by, and included in, the approved
2 "Land Consolidation area" by the 6/17/2013 decision of the
3 Pacific Regional Director, and Santa Ynez Valley Association
4 of Realtors hereby appeal that decision of approval in this
5 consolidated appeal.
6

7 CONCERNED CITIZENS OF THE
8 SANTA YNEZ VALLEY

9
10 By: 
11 G.B. Shepherd

12
13 MEADOWLAWK RANCHES ASSOC.

14
15 By: 
16

17
18 SANTA YNEZ VALLEY ASSOCIATION
19 OF REALTORS

20
21 By: 
22 Sharon Currie, President
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27 NOTICE OF APPEAL

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14 A LAND CONSOLIDATION AND ACQUISITION) REASON FOR THE APPEAL
15) OF THE JUNE 17, 2013
16 PLAN FOR THE SANTA YNEZ BAND OF) DECISION APPROVING
17 THE)
18 CHUMASH INDIANS) ESTABLISHMENT OF A
19 LAND) PROPOSED TRIBAL
20) CONSOLIDATION AND
21) ACQUISITION PLAN AND
22) ESTABLISHMENT OF A
23) LARGE TRIBAL
24) CONSOLIDATION AREA OF
25) THOUSANDS OF ACRES OF
26) OFF-RESERVATION FEE
27) OWNED LANDS

26 REASON FOR THE APPEAL OF THE JUNE 17, 2013 DECISION APPROVING THE
27 ESTABLISHMENT OF A PROPOSED TRIBAL LAND CONSOLIDATION & ACQUISITION PLAN

1 Plan on the entire 11,000+ acre area. By failing to do any
2 environmental analysis of the Plan the Regional Director and
3 the tribe improperly segmented the Land Consolidation and
4 Acquisition Plan from its various other land acquisition
5 activities and trust requests, as well as other development
6 in the region, in an effort to avoid a finding that a more
7 detailed and comprehensive environmental impact statement
8 ("EIS") was required. The action by the BIA has wholly
9 failed to assess the direct or cumulative impacts of the Land
10 Consolidation and Acquisition Plan and the concomitant
11 expansion of the potential tribal trust area.
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14 The impacts will be felt directly by residents of the
15 Santa Barbara County and the nearby cities and the
16 unincorporated areas of Santa Barbara County. The failure to
17 make any NEPA findings, considerations or study for the
18 Regional Director's approval of the Land Consolidation and
19 Acquisition Plan is of critical importance and invalidates
20 the approval in its entirety.
21

22 **B. Regional Director failed to give Interested Parties**
23 **Notice and Opportunity to Comment.**
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26 REASON FOR THE APPEAL OF THE JUNE 17, 2013 DECISION APPROVING THE
27 ESTABLISHMENT OF A PROPOSED TRIBAL LAND CONSOLIDATION & ACQUISITION PLAN
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1 The Regional Director issued her approval of the Land
2 Consolidation and Acquisition Plan on June 17, 2013. On the
3 face of the document there is no indication that any notice
4 of said decision was given to any party other than the tribe
5 itself. The County of Santa Barbara which exercises land use
6 jurisdiction over this area was not given notice of the
7 decision nor opportunity to comment on the proposed decision.
8 There is no indication that any of the interested parties in
9 the recent BIA cases involved in the prior applications
10 regarding the Chumash tribe were given any notice of the
11 proposed decision. The County of Santa Barbara was only made
12 aware of the decision when it was discovered as an enclosure
13 in a subsequent NEPA document for the later fee-to-trust
14 application sent to the County for comment. Insomuch as the
15 approval of the Plan by the Regional Director is a
16 foundational part of the tribe's subsequent fee-to-trust
17 application and materially impacts the standards of review
18 necessary regarding lands to be brought into trust within the
19 Plan area, all interested parties had a fundamental right to
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26 REASON FOR THE APPEAL OF THE JUNE 17, 2013 DECISION APPROVING THE
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1 Notice of the proposed Plan and should have been afforded a
2 right to comment prior to its approval.

3 The *Absentee Shawnee* decision by the IBIA which the
4 tribe attached to their request for Plan approval showed an
5 administrative approval process with multiple levels of
6 approval and comments by the interested party. The approval
7 in the present Plan by the Regional Director is entirely
8 devoid of proper administrative due process. Without any
9 public notice of the proposed Plan to any outside entity, the
10 Regional Director entered her approval and then, failed to
11 give notice of the decision. These actions were wholly in
12 violation of administrative due process and applicable
13 regulations.

16 **C. The Action by the Regional Director is Misuse of**
17 **the Land Consolidation Plan Concept and Contrary to Law.**

18 The Land Consolidation and Acquisition Plan approval by
19 the Regional Director and the Proposal by the Chumash tribe
20 both reference 25 C.F.R. 151.3(a)(1) as the regulatory basis
21 for the approval of the plan, insomuch as that section
22 mentions "tribal consolidation area." Tribal consolidation
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1 areas as contemplated in the *Absentee Shawnee* decision, the
2 *Cobell* Trust Land Consolidation and the Claims Resolution Act
3 of 2010 Public Law No. 111-291 have no correlation to nor
4 relevance to the situation involving the Chumash Tribe. There
5 is no history nor evidence of the lands involved in the Land
6 Consolidation and Acquisition Plan area ever having been held
7 by Indian interests, in trust or otherwise, nor is there any
8 history of land trust problems or the fractionalization of
9 lands held by any Indian owner. The creation of a "tribal
10 consolidation area" by the BIA for the Chumash is a misuse of
11 a regulatory tool created for a wholly different situation.
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14 Further, there is no statutory or regulatory basis for a
15 Land Consolidation Plan being used as a tool for expansion of
16 a reservation beyond any historic Indian ownership area. The
17 Chumash Proposal attempts to avoid this obvious issue by
18 claiming some historical claim on the lands held by the
19 Catholic Church in the area, but, as discussed elsewhere,
20 this claim is wholly incorrect and unsupported by history or
21 evidence. This is not a *Cobell* Land Trust issue. This is not
22 a matter involving fractionalization of Indian land holdings.
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1 This is not a case involving the consolidation of lands
2 previously held by tribal members or Indian trustees. The
3 Chumash tribe has never previously held title to nor has been
4 the beneficiary of a trust holding land outside of the 99
5 acre reservation established in 1897 by the federal
6 government. Without clear land title claims and historical
7 relevance of Indian land ownership, the approval of a land
8 "consolidation" plan is an abuse of discretion.

10 **D. The Factual Basis of the Approval was Incorrect and**
11 **the Regional Director Failed to Make Necessary Findings of**
12 **Fact.**

14 The Regional Director accepted and rubberstamped the
15 factual assertions made in the Tribe's Proposal without any
16 question, review or evidentiary basis. Those facts are
17 jurisdictional and directly relevant to the final decision
18 and the use of those unsupported factual assertions,
19 especially in the absence of public input and comment,
20 renders the decision unsupportable.

22 The entire purpose of the Tribe's Plan is explained by
23 the tribe as "planning for land acquisitions within the area
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1 historically held for the tribe by the Roman Catholic
2 Church." This purpose is founded on a flawed and totally
3 erroneous factual assertion, to wit, the purpose for the
4 Catholic Church's ownership of the land. The trust facts are
5 that the Spanish Land Grant to the Roman Catholic Church was
6 given for purposes of funding a college in California by the
7 Church, hence the original name for the Land Grant, the
8 "College Rancho," in a process remarkably similar to the USA
9 Land Grant College program. But, by making the bald
10 assertion that the entire 11,000+ acres was given for use of
11 the Indian tribe, the Tribe attempts to usurp preferential
12 treatment of its claims over a huge area for which it has no
13 cognizable land title claims. In reality, the only land
14 designated or used for Tribal or reservation purposes was the
15 original 99 acres which the federal Indian Agent for the
16 Mission Indians accepted in quit claim from the Catholic
17 bishop. There is no factual nor historical basis for
18 assertions such as "[A]ll these lands [11,000+ acres] were
19 considered to have been the property of the Santa Ynez
20 Mission Indians... ." Without any proper evidentiary basis and
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1 without any opportunity for challenge of these erroneous
2 factual assertions by interested parties the decision to
3 approve the Plan was factually deficient."

4 **E. The Regional Director's Decision was Arbitrary and**
5 **Capricious.**

6 The decision by Regional Director to approve the Land
7 Consolidation and Acquisition Plan was arbitrary and
8 capricious for multiple reasons. Regional Director's failure
9 to review whether the land in question met the core premise
10 of the land consolidation statutes and regulations, to with,
11 the existence of fractionalized and undivided fractional
12 interests in Indian land, was arbitrary and capricious.
13 Further, the use of the land consolidation process in an area
14 where there is no existing Indian land ownership and no
15 tribal reservation boundaries was arbitrary and capricious,
16 in that there is no statutory or regulatory basis for using
17 the land consolidation process to expand the area of a
18 reservation.
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22 Insomuch as the Regional Director premised her decision on
23 25 C.F.R. § 151.2(h) and § 151.3(a)(1) the failure to consider
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1 and make requisite findings on each of the required elements
2 under 25 C.F.R. Part 151 renders its decision arbitrary and
3 capricious, an abuse of discretion, or otherwise not in
4 accordance with the law. The facts underlying the approval, such
5 as the nature of the catholic Church's ownership interest and
6 other historical and geographic issues, were accepted without
7 review or question, rendering the entirety of the decision
8 arbitrary. *Village of Ruidoso*, 32 IBIA 130, 138-140 (1998)
9 (vacating the Area Director's decision because it was not clear
10 that the Area director considered all relevant facts relating to
11 the proposed decision). In addition, independent of the failure
12 to consider the factors under Part 151 properly, the Regional
13 director acted in an arbitrary and capricious manner by
14 approving the Plan in the absence of a rational basis for doing
15 so and without a clear nexus of need to start the administrative
16 process to take this land out of the jurisdiction of the
17 Appellant, County of Santa Barbara, by approving a Plan of which
18 the sole objective was, to expand the Tribal Lands with the
19 subsequent fee-to-trust acquisitions.
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RELIEF REQUESTED

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2 The County of Santa Barbara, with this Appeal, requests the
3 following relief, in the alternatives set forth below:

4 a. That the decision of the Regional Director to approve a
5 Land Consolidation and Acquisition Plan be overturned and the
6 Land Consolidation and Acquisition Plan be vacated in its
7 entirety as being ultra vires and without proper statutory or
8 regulatory basis;
9

10 b. That any consideration of fee-to-trust acquisitions
11 which are derivative of or based on the Land Consolidation and
12 Acquisition Plan be stayed until the issues of this appeal are
13 resolved.
14

15 c. That the Land Consolidation and Acquisition Plan be
16 remanded to the Regional Director with instructions that the
17 Regional Director reconsider the issuance of the Plan following
18 notice and the opportunity to comment by all interested parties;
19

20 d. That the Land Consolidation and Acquisition Plan be
21 remanded to the Regional Director with instructions that the
22 Regional director reconsider the issuance of the Plan following
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proper assessment of the Plan pursuant to the National
environmental Policy Act;

e. That the Land Consolidation and Acquisition Plan be
remanded to the Regional Director with instructions that the
Regional Director reconsider the issuance of the Plan to include
proper factual and legal findings which provide a historical and
legal basis for such a Plan and findings that there is existing
land title fractionalization of lands currently owned by tribal
members upon which the concept of a land consolidation plan is
premised.

Dated: September 20, 2013

Respectfully submitted,

CONCERNED CITIZENS OF THE
SANTA YNEZ VALLEY

By: G.B. Shepherd
G.B. Shepherd

MEADOWLAWK RANCHES ASSOC.

By: [Signature]

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SANTA YNEZ VALLEY ASSOCIATION
OF REALTORS

By: 
Sharon Currie, President

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IN RE: JUNE 17, 2013 DECISION BY) Docket No. _____
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PACIFIC REGIONAL DIRECTOR TO APPROVE) [not yet assigned]
)
A LAND CONSOLIDATION AND ACQUISITION) PROOF OF SERVICE
)
PLAN FOR THE SANTA YNEZ BAND OF)
)
CHUMASH INDIANS)
)

I, James E. Marino, declare that I am over the age of
eighteen and not a party to this cause. I am employed in, or
a resident of the County of Santa Barbara, where the mailing
occurs. My business address is 1026 Camino del Rio, Santa
Barbara, CA 93110.

PROOF OF SERVICE

1 I further declare that I am readily familiar with the
2 business practice of processing of correspondence for mailing
3 with the United States Postal Service this same day and in
4 the ordinary course of business.

5 I caused to be served the following documents described
6 as: NOTICE OF APPEAL TO THE I.B.I.A. AND REASONS FOR THE
7 APPEAL by placing a true and correct copy of these documents
8 in a separate envelope addressed to each addressee, known or
9 believed to be a person or party interested in this matter,
10 respectively, as follows:
11

12
13
14 SEE ATTACHED LIST
15

16 I declare under penalty of perjury that the foregoing is
17 true and correct. Executed this 20th day of September 2013.
18

19
20 _____
21 James E. Marino
22

23
24
25
26 PROOF OF SERVICE
27

PROOF OF SERVICE

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CERTIFIED

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CERTIFIED

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