



INTERIOR BOARD OF INDIAN APPEALS

Viejas Band of Mission Indians and County of San Diego, California  
v. Pacific Regional Director, Bureau of Indian Affairs

38 IBIA 73 (08/15/2002)



## United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
801 NORTH QUINCY STREET  
SUITE 300  
ARLINGTON, VA 22203

VIEJAS BAND OF MISSION INDIANS,	:	Order Dismissing Appeals Without
Appellant	:	Prejudice
	:	
and	:	
	:	
COUNTY OF SAN DIEGO, CALIFORNIA,	:	
Appellant	:	Docket Nos. IBIA 02-41-A
	:	IBIA 02-144-A
v.	:	
	:	
PACIFIC REGIONAL DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	August 15, 2002

The Board of Indian Appeals (Board) has received two appeals challenging a Finding of No Significant Impact (FONSI) issued on November 7, 2001, by the Pacific Regional Director, Bureau of Indian Affairs (Regional Director; BIA), under the National Environmental Policy Act (NEPA). The FONSI related to the proposed trust acquisition of a 16.69-acre parcel of land in San Diego County, California, for the Cuyapaipe Community of Diegueno Mission Indians of the Cuyapaipe Reservation.

The first appeal, which was received on December 26, 2001, was filed by the Viejas Band of Mission Indians (Viejas Band) (IBIA 02-41-A). The Viejas Band filed its appeal after receiving the FONSI. Noting that, if the trust acquisition were not approved, any issues relating to the FONSI would be rendered moot, on January 2, 2002, the Board stayed the appeal pending BIA's issuance of a final decision on the underlying trust acquisition.

On July 26, 2002, the Board received a notice of appeal from the County of San Diego, California (County) (IBIA 02-144-A). The County appealed from the Regional Director's June 27, 2002, decision on the proposed trust acquisition. From the notice of appeal, it appeared that the County was not challenging the trust acquisition itself, but instead was only challenging the FONSI.

On August 8, 2002, the County informed the Board that, in a July 22, 2002, letter to the Tribe, the Assistant Secretary - Indian Affairs vacated the Regional Director's June 27, 2002, decision on this trust acquisition and stated that he would issue the final decision on the trust

acquisition. The County attached a copy of the Assistant Secretary's letter, and requested clarification of the status of its appeal.

The Board had not previously been aware of the Assistant Secretary's letter.

Both of these present appeals challenge only the FONSI. The Assistant Secretary's letter states that he will issue the final decision on the trust acquisition, but does not mention whether or not he will address the NEPA issues. It is arguable that the Board should continue its stay in IBIA 02-41-A, impose a stay in IBIA 02-144-A, await a decision on the trust acquisition from the Assistant Secretary, and then address the NEPA issues. This procedure would be consistent with the procedure begun in IBIA 02-41-A.

However, in Citizens for Safety & Environment v. Northwest Regional Director, 37 IBIA 282 (2002), the Board dismissed an appeal challenging a FONSI determination relating to a trust acquisition. The Board took this different route because the matter was already pending in Federal court and might be totally resolved there. The Board's dismissal was without prejudice to the appellant's right to refile its appeal if the Federal court decided that further administrative action was necessary or desirable before it issued a decision.

The Board believes that the best procedure here is also to dismiss these appeals without prejudice. Neither the Board nor the parties know at this time if the Assistant Secretary's decision will address the NEPA issues that Appellants wish to raise. If the appeals are dismissed, Appellants will not need to return to the Board if the Assistant Secretary's decision on the underlying trust acquisition does deal with the NEPA issues. If, however, the Assistant Secretary's decision does not deal with those issues, Appellants will be able to refile appeals on the NEPA issues with the Board.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, these appeals are dismissed without prejudice.

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Kathryn A. Lynn  
Chief Administrative Judge

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//original signed  
Anita Vogt  
Administrative Judge