

2017

**General Information****Assigned Office:** NMSS**OEDO Due Date:** 03/18/2013**Other Assignees:****SECY Due Date:** 03/18/2013**Date Response****Requested by Originator:****Other Parties:****Subject:** Notice of Intent to Prepare Waste Confidence Environmental Impact Statement**Description:****CC Routing:** ADM, OGC, RegionIV**ADAMS Accession Numbers - Incoming:****Response / Package:****Other Information****Cross Reference No:** LTR-13-0142**SRM\Other:** No**Process Information****Action Type:** Letter**OEDO Concurrence:** No**Signature Level:** NMSS**OCM Concurrence:** No**Special Instructions:****OCA Concurrence:** No

Coordinate with OGC. Sent to DPC for Immediate Release in ADAMS per SECY.

**Document Information****Originator Name:** Sam Cohen**Date of Incoming:** 01/06/2013**Originator Org:** Santa Ynez Band of  
Chumash Indians**Document Received by OEDO Date:** 02/15/2013**Addressee:** The Commission**Incoming Task:** Letter**OEDO POC:** Yen-Ju Chen

OFFICE OF THE SECRETARY  
CORRESPONDENCE CONTROL TICKET

*Date Printed: Feb 14, 2013 15:39*

PAPER NUMBER: LTR-13-0142

LOGGING DATE: 02/13/2013

ACTION OFFICE: ED/GC

AUTHOR: Sam Cohen

AFFILIATION:

ADDRESSEE: CHRM Allison Macfarlane

SUBJECT: Expresses concern that the Tribe or Chumash has had no formal notice on the Notice of Intent to prepare Waste Confidence Environmental Impact Statement

ACTION: Direct Reply

DISTRIBUTION: RF, SECY to Ack.

LETTER DATE: 01/06/2013

ACKNOWLEDGED No

SPECIAL HANDLING: Lead office to publicly release 24 hours after SECY's assignment, via SECY/EDO/DPC.

NOTES: EDO to coordinate response with OGC.

FILE LOCATION: ADAMS

DATE DUE: 03/18/2013

DATE SIGNED:



## Santa Ynez Band of Chumash Indians

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### BUSINESS COMMITTEE

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Richard Gomez, *Vice Chairman*  
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January 6, 2013

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William C. Ostendorff  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

### RE: Notice of Intent to Prepare Waste Confidence EIS

Dear Chairwoman Macfarlane and Members of the U.S. Nuclear Regulatory Commission:

The Santa Ynez Band of Chumash Indians ("Tribe" or "Chumash") were not included in any notice of the above Waste Confidence EIS. Such notice is required by certain federal laws, Executive Orders and judicial precedent some of which is non-exclusively summarized herein for your convenience.

#### (1) SANTA YNEZ BAND OF CHUMASH INDIANS

Located on the Santa Ynez Reservation in Santa Barbara County, California, the Santa Ynez Band of Chumash Indians ("Chumash" or "Tribe") was federally recognized in 1901 and remains the only federally-recognized Chumash tribe in the nation. <http://www.loc.gov/catdir/cpsd/biaind.pdf>. The Chumash original territory lies along the coast of California, between Malibu and Paso Robles, as well as on the Northern Channel Islands. The area was first settled about 13,000 years ago and at one time, the Chumash had a total population of about 18,000 people.

The Santa Ynez Band of Chumash Indians was eventually relegated to 99-acres which lies entirely in a flood plain, 40 percent of which is within a flood zone near the unincorporated city of Santa Ynez, County of Santa Barbara, California. For many years, few tribal members lived on the Reservation since running water and electricity was not made available to Tribal residents. The establishment of indoor plumbing didn't happen on the Reservation until the 1960s. In late 1970s, the first of the Housing and Urban Development (HUD) homes were built and more tribal members were able to move on to the Reservation.

Pursuant to its Articles of Organization, the day-to-day business of the Tribe is governed by an elected Business Committee. The Business Committee has an elected Chairman

and selects from within the remaining Business Committee Members a Vice Chairman, Secretary and Treasurer. [www.santaynezchumash.org](http://www.santaynezchumash.org).

## (2) THE NATIONAL HISTORIC PRESERVATION ACT (NHPA)

The NHPA requires Federal agencies to consult with any Indian tribe that attaches religious and cultural significance to historic properties that may be affected by a federal undertaking and take those potential effects into account in their decision making. This consultation should occur at the earliest steps in general land management or project planning and may include consultation with Tribes concerning inventory methods, management prescriptions, proposed land uses, and impacts from both human and natural effects.

Under the NHPA, prior to approving federal action, agencies must take into account and enter consultation concerning the effects of the action on properties eligible for inclusion in the National Register for Historic Preservation. Under the NHPA amendments of 1992, historic properties of religious and cultural importance to a Native American Tribe may be determined eligible for inclusion on the National Register of Historic Places (National Register or NRHP) and therefore subject to NHPA consultation requirements. The 1992 amendments significantly expanded the provisions of the NHPA to ensure that Tribal interests are considered in determinations of significance and effect.

## (3) EXECUTIVE ORDER 13007 "INDIAN SACRED SITES"

President Clinton's E.O. 13007 (1996) on Indian sacred sites directs Federal agencies "to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions, (1) [to] accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and (2) avoid adversely affecting the physical integrity of such sacred sites."

**A key feature of this definition is that it is Tribes and appropriate representatives of AI/AN religions who identify which sites are sacred to them, not the Federal Government.**

## (4) EXECUTIVE ORDER 13175 "CONSULTATION AND COORDINATION WITH INDIAN TRIBAL GOVERNMENTS"

On November 5, 2009, President Obama issued a Presidential Memorandum on Tribal Coordination. That memorandum reaffirmed Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments," and emphasized the importance of strengthening government-to-government relationships with Native American tribes.

In response to the Presidential Memorandum, NRC staff reviewed the agency's various interactions with Native American tribes, and developed a Commission Paper (SECY-09-0180), entitled "U.S. Nuclear Regulatory Commission Interaction with Native American tribes," dated December 11, 2009. In that paper, the staff noted that the NRC's previous

interactions had been limited to a small number of activities under the agency's regulatory authority. The NRC concluded that because a "case-by-case" approach had proven effective in these interactions with Native American tribes by allowing for custom-tailored approaches that met Commission and tribal needs, that no formal policy was needed at that time.

#### (5) TRIBAL TRUST RESPONSIBILITY

The Tribal trust responsibility requires the Federal Government to maintain a fiduciary relationship towards all federally recognized Tribes. The trustee beneficiary relationship between the Federal Government and Indian Tribes has been described as resembling a "guardian-ward" relationship. The trust relationship was first recognized by the Supreme Court in its early decisions interpreting Indian treaties, and the Court's interpretation of the trust responsibility has evolved over the years.

#### (6) UNDRIP

In December 2010, the United States announced support for the **United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)**. In announcing this support, President Obama stated: "The aspirations it affirms—including the respect for the institutions and rich cultures of Native peoples—are one we must always seek to fulfill...[W]hat matters far more than any resolution or declaration – are actions to match those words." The UNDRIP addresses indigenous peoples' rights to maintain culture and traditions (Article 11); and religious traditions, customs, and ceremonies (Article 12); to participate in decision making in matters which would affect their rights (Article 18); and to maintain spiritual connections to traditionally owned lands (Article 25).

#### (7) REQUEST FOR ADDITIONAL TIME TO RESPOND

As the Santa Ynez Band of Chumash Indians have had no formal notice of this action we request additional time to respond.

Sincerely,



Sam Cohen  
Government and Legal Specialist  
Santa Ynez Band of Chumash Indians

CC:

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