

Rulemaking1CEm Resource

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Subject: FW: NRC-2012-0246 comments from Santa Ynez Band of Chumash Indians

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COMMENT#: 00483

From: Sam Cohen [mailto:scohen@santaynezchumash.org]
Sent: Wednesday, December 18, 2013 9:51 AM
To: RulemakingComments Resource
Cc: Sam Cohen
Subject: NRC-2012-0246 comments from Santa Ynez Band of Chumash Indians

The Santa Ynez Band of Chumash Indians (“Tribe” or “Chumash”) hereby provides the following comments to NRC-2012-0246.

(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 lays 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.

The Santa Ynez Indian Reservation is located 75 miles south of the Diablo Canyon Nuclear Power Plant near Avila Beach, California and 196 miles north of the San Onofre Nuclear Power Plant between Los Angeles and San Diego, California. In addition the Chumash are less than 100 miles northeast from the Santa Susana

Sodium Reactor Experimental (SRE) which was a small sodium-cooled experimental reactor built by Southern California Edison and Atomics International at the Santa Susana Field Laboratory, near Moorpark in Ventura County. SRE has since been dismantled after a reactor incident and the entire Santa Susana Field Laboratory has been declared excess federal property by the General Services Administration.

(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) ADVISORY COUNCIL ON HISTORIC PRESERVATION (ACHP)

As of June 2013 and as updated November 2013, the federal Advisory Council on Historic Preservation (ACHP) approved the UN Declaration on the Rights of Indigenous Peoples. <http://indiancountrytodaymedianetwork.com/2013/06/03/federal-agency-supports-undrip-new-era-tribal-federal-relations-149676>. ACHP will now incorporate the UN Declaration on the Rights of Indigenous Peoples in the National Historic Preservation Act (NHPA) Section 106 review process.

Sincerely,

Sam Cohen
Government and Legal Specialist
Santa Ynez Band of Chumash Indians
P.O. Box 517
Santa Ynez, CA 93460
Cell: 805-245-9083

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