



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

DEHESA VALLEY COMMUNITY)	Pre-Docketing Notice and Order for
COUNCIL, INC.,)	Appellant to Show Cause
Appellant,)	
)	
v.)	
)	Docket No. IBIA _____
PACIFIC REGIONAL DIRECTOR,)	
BUREAU OF INDIAN AFFAIRS,)	
Appellee.)	January 10, 2013

On December 26, 2012, the Board of Indian Appeals (Board) received a notice of appeal from the Dehesa Valley Community Council, Inc. (Appellant), through Lory Walls, President.¹ Appellant seeks review of an October 19, 2012, decision (Decision) by the Pacific Regional Director (Regional Director), Bureau of Indian Affairs, to accept approximately 1411.11 acres of land, located in San Diego County, California, in trust for the Sycuan Band of the Kumeyaay Nation (Tribe).²

Procedural regulations governing administrative appeals to the Board are found in 43 Code of Federal Regulations (C.F.R.) Part 4. A copy of these regulations is enclosed for non-Federal parties.

Order for Appellant to Show Cause

As a threshold matter, the Board must first address the issue of timeliness of the appeal. A notice of appeal from a decision of a BIA regional director must be filed with the Board "within 30 days after receipt by the appellant of the decision from which the appeal is taken." 43 C.F.R. § 4.332(a). The 30-day deadline for filing an appeal with the Board is jurisdictional, *id.*, and cannot be extended by the Board, 43 C.F.R. § 4.310(d)(1). *See also* Decision at 19 ("No extension of time may be granted for filing a notice of appeal.").

¹ The notice of appeal was signed for Walls by Patricia Riggs, Secretary of Appellant.

² According to the Decision, the subject property consists of 21 parcels of land and is contiguous to the Tribe's reservation. A detailed description of the property is included in the Decision. *See* Decision at 1-10.

Appellant's notice of appeal does not clearly state when Appellant first obtained or reviewed a copy of the Decision, and the lapse of time between the Regional Director's issuance of the Decision and the filing of this appeal, combined with other evidence, raises questions about the timeliness of the appeal. The notice of appeal states that Riggs "discovered" that the Decision had been issued "when she called" BIA on November 26, 2012, Notice of Appeal at 1, but Appellant does not state when Walls may have obtained a copy of the Decision.³ Moreover, Appellant's recitation concerning Riggs' call to BIA states that Riggs called BIA "and asked if the Notice of Decision . . . was final," Notice of Appeal at 2, which might suggest that Riggs already had notice of the Decision when she called BIA, and did not first learn of it during her call to BIA.⁴

In addition, in another appeal from the same Decision to the Board, San Diego Gas and Electric (SDG&E) filed an affidavit with its notice of appeal to establish the timeliness of its appeal.⁵ In that affidavit, a copy of which is enclosed, Allen K. Trial, Esq., of SDG&E states that he received an email from Walls on November 20, 2012, which contained a link to the website of Stand Up for California, on which was posted a copy of the Decision.⁶

The above evidence suggests that Appellant's appeal may be untimely. On or before February 4, 2013, Appellant is ordered to show cause, with supporting evidence, why the appeal should not be dismissed as untimely. In addition to any other evidence Appellant may wish to submit, the Board specifically solicits affidavits from Riggs and Walls stating when they first reviewed a copy of the Decision, and an affidavit from Walls responding to the affidavit from SDG&E concerning Walls' apparent knowledge of and access to the Decision by November 20, 2012. Failure by Appellant to respond to or comply with this order may result in summary dismissal of the appeal without further notice.

³ The notice of appeal also asserts that Appellant "never received" the Decision "as part of the distribution list," which appears to be the case, but it is unclear when Appellant first obtained or reviewed a copy by other means.

⁴ Before filing the appeal, Appellant sought information from BIA concerning a possible extension, and the Regional Director forwarded Appellant's correspondence to the Board. By letter dated December 26, 2012, the undersigned advised Walls that BIA had correctly advised her that no extension of time could be granted for filing an appeal.

⁵ The Board is issuing a separate pre-docketing notice for SDG&E's appeal and ordering the administrative record for the Decision from the Regional Director in connection with that appeal. The Board declines to consolidate the two appeals at this time, pending resolution of whether Appellant's appeal is timely.

⁶ The Board has reviewed the website, www.standupca.org, which contains a complete copy of the Decision and the enclosure (the Board's appeal regulations). It appears that a copy of the Decision and the enclosure were posted on the website on November 7, 2012.

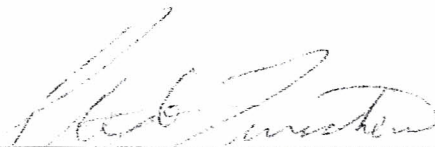
Interested parties may file answers to Appellant's response to this order to show cause within 20 days of receipt of the responses, and Appellant may file a reply within 5 days of receipt of any answer brief.

Copies of all pleadings filed with the Board must be served on all interested parties. 43 C.F.R. §§ 4.310(b), 4.333(a). If U.S. mail is used for service and filing, it does not need to be by certified mail; parties may use regular first-class mail, unless they wish to obtain a receipt for their own records. If counsel is appearing for an interested party, counsel should enter an appearance, after which service should be made on counsel. A certificate or affidavit evidencing service shall be filed concurrently with the document furnished to the Board.

The Board's Internet website, containing a free, searchable database of its decisions, is located at www.oha.doi.gov. The Board's decisions are also available on the for-fee websites of WestLaw and Lexis-Nexis. There may be some delay in providing Board decisions to the operators of these sites, but they are relatively current.

Further Proceedings

In accordance with 43 C.F.R. § 4.336, this case will be assigned a docket number 20 days after the date of receipt noted above unless the Board has been properly notified before that date that the Assistant Secretary - Indian Affairs has assumed jurisdiction over the appeal. If the Assistant Secretary - Indian Affairs properly notifies the Board of an assumption of jurisdiction under 25 C.F.R. § 2.20(c) and 43 C.F.R. § 4.332(b), the parties will be so informed, and the appeal will be transmitted to him.⁷



Steven K. Linscheid
Chief Administrative Judge

Enclosures: (appeal regulations for non-Federal parties)
(Affidavit of Trial for all parties)

Distribution: See attached list.

⁷ As noted, *supra* note 5, the Board is ordering the administrative record for the Decision in connection with SDG&E's appeal. No further action concerning the record is required of BIA at this time in connection with Appellant's appeal.

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