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10
11 **UNITED STATES DEPARTMENT OF INTERIOR**
12 **ASSISTANT SECRETARY - INDIAN APPEALS**

13 BRIAN KRAMER AND SUZANNE	)	OPENING BRIEF OF APPELLANTS,
14 KRAMER; COUNTY OF SANTA BARBARA,	)	BRIAN KRAMER AND SUZANNE
15 CALIFORNIA; NO MORE SLOTS; LEWIS P.	)	KRAMER
16 GEYSER AND ROBERT B. CORLETT;)	
17 PRESERVATION OF LOS OLIVOS; SANTA	)	(Certificate of Filing and Service is submitted
18 YNEZ VALLEY CONCERNED CITIZENS;	)	herewith)
19 ANNE (NANCY) CRAWFORD-HALL, ET)	
20 AL.; AND SANTA YNEZ VALLEY	)	(Appeal of December 24, 2014, Decision of
21 ALLIANCE,	)	the Pacific Regional Director to Take the
22 Appellants,	)	Camp 4 Property into Trust)
23 vs.)	
24 PACIFIC REGIONAL DIRECTOR, BUREAU	)	Opening Briefs Due: June 29, 2015
25 OF INDIAN AFFAIRS,	)	Responsive Briefs Due: August 14, 2015
26 Appellee.	)	Reply Briefs Due: September 14, 2015
27)	
28)	
_____)	
SANTA YNEZ BAND OF CHUMASH)	
INDIANS, REAL PARTY IN INTEREST)	
_____)	

23 TO THE ASSISTANT SECRETARY - INDIAN AFFAIRS:

24 COME NOW Appellants, BRIAN KRAMER and SUZANNE KRAMER, and submit the

25 following Opening Brief in support of Appellants' Appeal of the BIA's Pacific Regional Director's

26 December 24, 2014, NOTICE OF DECISION to accept into trust approximately 1,427 acres for the Santa

27 Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation of California, located in Santa

28 Barbara County, State of California (hereinafter, the "Tribe").

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- EXHIBIT “A” FOIA Response Letter from United States Department of the Interior, dated April 16, 2015**
- EXHIBIT “B” Email from Tara Gomez to William Wyatt, dated January 27, 2014, produced in response to FOIA Request by Appellant, Brian Kramer**

1 "Let us not seek the Republican answer or the Democratic answer, but the right answer.
2 Let us not seek to fix the blame of the past. Let us accept our own responsibility for the
3 future."

John F. Kennedy

4 "So, let us not be blind to our differences - but let us also direct attention to our common
5 interests and to the means by which those differences can be resolved."

John F. Kennedy

6 **A. INTRODUCTION:**

7 Appellants, Brian Kramer and Suzanne Kramer, live in close proximity to Camp 4 and are
8 neighbors of the Chumash Tribe who own Camp 4 in fee. Appellants do not dispute the Tribe's right to
9 use and develop their property as any other landowner in the Santa Ynez Valley or their right to attempt
10 to take their property into trust, assuming all legal requirements are met; however, appellants challenge
11 and appeal the BIA's erroneous and illegal decision to transfer Camp 4 from fee-to-trust for future
12 development without full compliance with the law and without properly evaluating the "substantial
13 questions" raised concerning potentially significant impacts of the proposed project. Appellants seek a
14 finding an Environmental Impact Statement ("EIS") is required under the National Environmental Policy
15 Act ("NEPA") before Camp 4 can be taken into trust. Appellants also seek a finding that development of
16 Camp 4 shall not be permitted before 2023. That is the right answer in order to accept our responsibility
17 for protecting the environment for future generations and to resolve our differences on the proper way to
18 protect the environment.

19 The administrative record reveals the Final Environmental Assessment (Final EA) is inadequate
20 and an EIS is required under NEPA. The Finding of No Significant Impact (FONSI) issued by the
21 Regional Director on October 17, 2014, must be vacated as it is erroneous and relies on a legally and
22 factually deficient Final EA and it fails to adequately address the "substantial questions" raised
23 concerning potentially significant impacts of the proposed project that mandate an EIS. The Regional
24 Director abused her discretion in issuing the NOTICE OF DECISION ("NOD") of December 24, 2014,
25 with the stated intent to accept approximately 1,427 acres known as Camp 4 into trust, as the NOD is
26 factually and legally erroneous, it relies on a factually and legally erroneous Final EA and FONSI and it
27 violates NEPA. For the reasons set forth below, the NOD must be vacated and an EIS performed to fully
28 protect the environment and to insure the integrity of the fee-to-trust process for all parties involved.

1 **B. RELIEF REQUESTED:**

2 Appellants, Brian Kramer and Suzanne Kramer, request the following relief:

3 1. That the Pacific Regional Director's NOTICE OF DECISION ("NOD") of December 24,
4 2014, with the stated intent to accept approximately 1,427 acres known as Camp 4 into trust, be vacated
5 and reversed as the Regional Director abused her discretion and the NOD is factually and legally
6 erroneous and violates NEPA;

7 2. That the Finding of No Significant Impact (FONSI) issued by the Regional Director on
8 October 17, 2014, be vacated and reversed as the Regional Director abused her discretion and the FONSI
9 is factually and legally erroneous and violates NEPA;

10 3. That the May 2014 Final Environmental Assessment (Final EA) on which the NOD and
11 FONSI are based be vacated as it is factually and legally erroneous and violates NEPA;

12 4. That the NOD and FONSI be remanded to the BIA with instructions the BIA reconsider
13 the approval of the Fee-to-Trust Application only after the preparation of an Environmental Impact
14 Statement (EIS) in compliance with NEPA;

15 5. That the NOD and FONSI be remanded to the BIA with instructions that all criteria set
16 forth in 25 C.F.R. §151.10 and §151.11 be fully considered and analyzed, including ownership of the
17 dedicated public roadways that separate the five (5) parcels under consideration to be taken into trust;

18 6. That the NOD and FONSI be remanded to the BIA with instructions the record indicates
19 the proposed Federal action of transferring Camp 4 into trust is a major Federal action significantly
20 affecting the quality of the human environment, as defined by NEPA, and an EIS is required;

21 7. That the NOD and FONSI be remanded to the BIA with instructions the representations
22 in the Final EA (AR0194.00025) and Tribe Resolution No. 931 attached the Tribe's Applications for
23 Transfer of Title into Trust (AR0080.00199) preclude any development of Camp 4 prior to 2023;

24 8. That the NOD and FONSI be remanded to the BIA with instructions the Tribe agreed to
25 comply with the *Williamson Act* contracts, as acknowledged in the Final EA (AR0194.00025) and Tribal
26 Resolution No. 931 (AR0080.00199), which preclude any development of Camp 4 prior to 2023;

27 9. That the processing of the fee-to-trust acquisition be stayed until the issues of this appeal
28 and other appeals are resolved;

1 10. Appellants seek the relief requested by all other Appellants to the extent those Appeals
2 seek relief that is not inconsistent with the relief requested herein.

3 **C. APPELLANTS HAVE STANDING:**

4 Appellants, Brian Kramer and Suzanne Kramer, are interested parties who reside in close
5 proximity to Camp 4 and will be adversely affected by the NOD for the following reasons, among others:
6 Appellants own property and reside within approximately two tenths (.2) of a mile to the east of Parcel 2
7 of Camp 4 (Appellants' property is depicted in the aerial photograph in the Final EA, Figure 1-3,
8 AR0194.00011); Appellants' community is contiguous with Camp 4; Appellants' water supply comes
9 from wells immediately adjacent to Camp 4 and Appellants' water supply will be impact by the Camp 4
10 development; the development of Camp 4 will place significant demands on the local infrastructure that
11 will negatively impact Appellants; the development of Camp 4 will significantly increase traffic, noise,
12 congestion and safety concerns, among other things, which will negatively impact Appellants; the
13 development of Camp 4 will have a significant negative impact on wildlife in the area which will
14 negatively impact Appellants; the proposed development of Camp 4 is inconsistent with local zoning
15 regulations and land uses and will significantly change the character of the surrounding area which will
16 negatively impact Appellants and the value of Appellants' property, among other surrounding properties.
17 Appellants' stand to suffer an actual and imminent injury that is directly related and traceable to the
18 BIA's NOD which injury and harm will be redressed by a decision favorable to Appellants. (See *Lujan*
19 *vs. Defenders of Wildlife*, 504 U.S. 555 (1992).

20 Appellant, Brian Kramer, is an attorney in good standing with the State Bar of California and is
21 licensed to practice before the Courts of the State of California and is eligible, pursuant to 43 C.F.R.
22 §1.3, to practice before the Department of the Interior. In addition, Appellant, Brian Kramer, has a
23 degree in Urban and Regional Planning from the University of Southern California.

24 **D. FACTUAL BACKGROUND:**

25 The approximately 1,427 acres known as Camp 4 are owned in fee by the Tribe and the land is
26 not contiguous with the Tribe's reservation, i.e., Camp 4 is approximately 1.6 miles northeast of the
27 Tribe's Reservation (Final EA, Figure 1-2, AR0194.00010; Final EA, AR0194.00094). The land is
28 "primarily composed of undeveloped pasture land actively being used for buffalo grazing with a 256-acre

1 vineyard operation, a ranch house and barn, and an operating horse stable.” (Final EA, AR0194.00094).
2 The “surrounding land uses include low-density rural residential areas to the north, east, and west, and
3 agricultural fields and undeveloped pasture land to the west and south.” (Final EA, pg. AR0194.00094).
4 According to the Santa Barbara County Comprehensive Plan adopted in 1991 and republished in May of
5 2009, the entire project site is zoned Agricultural II (AG-II-100). (Final EA, AR0194.00094). The entire
6 project site is located within the Santa Ynez Valley Community Plan, adopted on December 9, 2009.
7 (Final EA, AR0194.00094). All of the parcels within the project site are under active *Williamson Act*
8 contracts (Santa Barbara County, 2009a) (see Final EA, AR0194.00099; Tribal Resolution No. 931,
9 AR080.00199).

10 On June 27, 2013, the Tribe submitted an Application to transfer the approximately 1,427 acre
11 Camp 4 property from fee to trust (AR0030.00001). In July 2013, the Tribe submitted a supplemental
12 Application (AR0032.00001). In November 2013, the Tribe submitted a revised Application
13 (AR080.00001). Tribe Resolution No. 931, dated July 1, 2013, is attached to the Applications as Exhibit
14 “O” (AR032.00200 and AR080.00199) which states the following with respect to the Tribe’s complying
15 with the *Williamson Act* contracts:

16 BE IT FURTHER RESOLVED, that the Business Committee has filed a notice of non-
17 renewal for all Williamson Act Contracts encumbering the Property and the **Tribe**
18 **further agrees to comply with the terms of such Williamson Act Contracts during**
19 **the nine (9) year non-renewal period until the expiration of the Contracts.**
(Emphasis added) (AR080.00199)

19 An August 2013 Environmental Assessment (hereafter “EA”) was issued. A May 2014 Final
20 Environmental Assessment (hereinafter “Final EA”) was issued. The Final EA revealed the following
21 three alternatives for the proposed development of Camp 4 (Final EA, AR0194.00019):

22 **ALTERNATIVE A:** The construction of 143 homes on five (5) acre lots with access roadways
23 covering approximately 793 acres of the project site; 206 acres of vineyards (50 acre reduction of the
24 existing vineyard); 300 acres of open space/recreational; 98 yards of riparian corridor and 33 acres of oak
woodland conservation; and, 3 acres of Special Purpose Zone - Utilities.

25 **ALTERNATIVE B:** The construction of 143 homes on One (1) acre lots with access roadways
26 covering approximately 194 acres of the project site; 896 acres of open space/recreation; 30 acres of
tribal facilities (including 12,042 square foot tribal facility); and the same acreage of vineyard, riparian
corridor and oak woodland conservation, and utilities land uses as proposed under Alternative A.

27 **ALTERNATIVE C (No Action Alternative):** No proposed development aside from an
28 expansion of the existing vineyard by approximately 44 acres.

1 According to the Final EA, Alternative A will result in the destruction of 70 oak trees within the
2 project (Final EA, AR0194.00131) and Alternative B will result in the destruction of 50 oak trees within
3 the project (Final EA, AR0194.00159). The 2013 EA states the Tribal Facilities will total 80,000 square
4 feet (AR0127.00018) as opposed to the 12,042 square feet mentioned in the Final EA (AR0194.00029).

5 The Final EA expressly states “. . . it is assumed that **construction of the project would begin**
6 **after the grace period for the non-renewal of the Williamson Act contracts has ended** (pursuant to
7 Tribal Resolution 931 dated July 1, 2013) and would be phased over approximately 4 to 9 years as new
8 tribal homes are needed. . . . **It should be noted that construction of the selected project alternative**
9 **would not begin until 2023.**" (Emphasis added). (AR0194.00025).

10 After the Final EA was issued and after the close of the comment period, the Tribe passed Tribal
11 Resolution 930B and selected the one (1) acre parcel concept set forth in Alternative B (AR0237.00005),
12 i.e., 143 homes on one (1) acre lots with access roadways covering approximately 194 acres, 896 acres of
13 open space/recreation, and 30 acres of tribal facilities. According to the Final EA, the proposed housing
14 will consist of single-family detached houses of varying sizes ranging from 3,000 to 5,000 square feet.
15 (AR0194.00031). The tribal facility will include 250 parking spaces and will include office space for 40
16 tribal employees and result in up to 100 events per year being held at the facility with up to
17 approximately 400 attendees plus vendors (see Final EA, AR0194.00029). Alternative B also includes a
18 tertiary waste water treatment plant with related sewer lift stations and conveyance systems, roadways,
19 and significant grading and excavation for the project (Final EA, AR0194.00024).

20 On or about October 17, 2014, the Regional Director of the BIA, issued a Finding of No
21 Significant Impact (“FONSI”) that states (see FONSI, AR0237.00001):

22 Based on the entire administrative record including the analysis in the Final
23 Environmental Assessment (EA) and consideration of comments received during the
24 public review period, the BIA makes a finding of no significant impact (FONSI) for the
25 federal action to acquire approximately 1,411 acres plus right of ways into trust and
26 subsequent implementation of Alternative A (Five-Acre Housing Plots) or Alternative B
(One-Acre Housing Plots). This finding constitutes a determination that the Proposed
27 Action is not federal action significantly affecting the quality of the human environment.
28 Therefore, an Environmental Impact Statement (EIS) is not required.

27 On or about December 24, 2014, the Regional Director issued a NOTICE OF DECISION
28 (hereinafter “NOD”) that expressly states the BIA’s intention to accept the five (5) parcels of

1 approximately 1,427 acres of off-reservation land into trust for the Tribe. The NOD states:

2 This is our Notice of Decision for the application of the Santa Ynez Band of Chumash
3 Mission Indians to have the below described property accepted by the United States of
4 America in trust for the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez
5 Reservation of California.

6 This Appeal arises out of the NOD and its stated intention to accept into trust approximately
7 1,427 acres of off-reservation land for the Tribe, i.e., five (5) separate parcels of land known as Camp 4.¹

8 **E. THE FEE-TO-TRUST APPLICATION PROCESS APPEARS TO BE BIAS AND LACKS
9 OBJECTIVITY, TRANSPARENCY AND IMPARTIALITY.**

10 A 2012 Pepperdine Law Review article entitled *Extreme Rubber-Stamping: Fee-to-Trust Process*
11 *of the Indian Reorganization Act of 1934*, 40 Pepp. L.Rev. 251 (2012), analyzed the Notices of Decision
12 the Pacific Regional BIA issued on proposed trust acquisitions from 2001 through 2011 (which totaled
13 111 Decisions). The results of the analysis revealed “100% of the proposed fee-to-trust acquisitions
14 submitted to the Pacific Region BIA from 2001 to 2011 were granted. Additionally, across all 111
15 decisions, the Pacific Region BIA did not conclude that a single factor weighed against acceptance of the
16 land into trust.” (40 Pepp. L.Rev. 278). The Pepperdine Law Review article concludes the acceptance
17 rate for fee-to-trust acquisitions in California communicates a powerful message: “with a 100%
18 acceptance rate, the process is merely an exercise in extreme rubber-stamping.” (40 Pepp. L.Rev. 305).

19 Notwithstanding material errors of fact and law in the Final EA and FONSI which violate NEPA,
20 and a lack of substantial evidence to support the NOD, the Regional Director issued a NOD stating the
21 BIA’s intention to accept the 1,427 acres into trust, along with a finding that “. . . the proposed Federal
22 action is not a major Federal action significantly affecting the quality of human environment, as defined
23 by NEPA. . . . Therefore preparation of an Environmental Impact Statement (EIS) is not required.”
24 (NOD, pg 24) There appears to be substantial evidence of bias and lack of objectivity, transparency and
25 impartiality on the part of the BIA in the pending fee-to-trust process as the above finding is not

26 ¹ The five parcels consist of the following Assessor Parcel Numbers: Parcel 1 (APN(s) 141-
27 121-051 and 141-140-010) which totals 194.9 acres; Parcel 2 (APN 141-140-010) which is 683.3 acres;
28 Parcel 3 (APN(s) 141-230-023 and 141-140-010) which totals 257.7 acres; Parcel 4 (APN(s) 141-240-
002 and 141-140-010) which totals 260.5 acres; and Parcel 5 (APN 141-230-023) which totals 21.9 acres.
The right-of-ways total 21.9 acres. (Final EA, AR0194.00008)

1 supported by the record. Appellants understand the BIA serves a role to help assist tribes achieve their
2 goal of self-determination; however, the BIA must maintain objectivity and impartiality.

3 The record reveals the NOD is tainted by bias and lacks objectivity which gives no credibility to
4 the NOD's finding that the proposed Federal action will not significantly affect the quality of the human
5 environment, as defined by NEPA, and an EIS is not required. In *Rio Arriba, New Mexico, Board of*
6 *County Commissioners v. Acting Southwest Regional Director*, 38 IBIA 18 (2002), it was noted when the
7 possibly tainted decision was issued under the BIA's discretionary authority, the Board will refer the
8 matter to the Assistant Secretary - Indian Affairs under 43 C.F.R. §4.337(b) for issuance of a new
9 discretionary decision. The U.S. Department of the Interior website, *Survey of Interior Board of Indian*
10 *Appeals Case Law on Land Acquisition*, comments the *Rio Arriba* "case is worth noting for BIA decision
11 makers as a reminder to take great care to maintain their objectivity in order to make a fair and balanced
12 decision. The decision reminds the BIA decision makers that in this capacity they are required to be fair
13 and impartial, should not be advocates, and must avoid even the appearance of a lack of objectivity. A
14 BIA official whose judgment may be tainted should recuse him or herself from making the decision."
15 (The U.S. Department of the Interior website, *Survey of Interior Board of Indian Appeals Case Law on*
16 *Land Acquisition*).

17 The FONSI was issued on October 17, 2014. The record does not reveal the BIA considered any
18 option other than issuing a FONSI. The BIA found no need to require further investigation on any matter
19 despite the plethora of information that raised "substantial questions" concerning potentially significant
20 impacts of the proposed project. It appears on September 22, 2014, almost 1 month prior to the issuance
21 of the FONSI, the Tribe, through its environmental engineering consultant, Analytic Environmental
22 Services (AES), requested and received a "draft" of the FONSI (see AR0224.0001). On September 22,
23 2014, AES emailed Chad A. Broussard of the BIA with the following request: "Can I share a copy of the
24 FONSI to the Tribe for their review or wait?" (AR0224.00001) On September 23, 2014, Chad A.
25 Broussard wrote to the Tribe's consultant, AES, "Go ahead and share a copy with them now."
26 (AR0224.00001). Why was the BIA providing a draft of the FONSI to the Tribe one (1) month before it
27 was issued? Was a draft of the FONSI provided to any Appellant? It should be noted the "draft" FONSI
28 is not included in the administrative record prepared by the BIA; however, the "draft" was provided to

1 the Tribe's consultant and the Tribe. Why is the "draft" of the FONSI not included in the administrative
2 record (AR0225 is missing)? The Regional Director makes reference in her October 2, 2014, email to
3 receiving calls from the "Chairman." (AR0229.00001). The Regional Director writes on October 2,
4 2014, "I understand that we received the comments from AES on Santa Ynez. Can you give me the
5 status, as you can figure the Chairman has called. Just need to let him know where we go from here."
6 (AR0229.00001) The only known "Chairman" in this matter is Chairman Vincent Armenta. Why was
7 the Chumash Tribal Chairman having ex parte communications with the Regional Director (decision
8 maker) and what did they discuss? Why did the Regional Director "need to let him know where we go
9 from here?" Did the Regional Director let any Appellant "know where we go from here?"

10 The record also indicates the Tribe's consulting firm, AES, was requesting the BIA meet certain
11 deadlines at the request of the Tribe with respect to publishing the Notice of Availability (NOA) for the
12 August 2013 EA. On August 2, 2013, an email from the AES to the BIA states: " Please note that AES
13 is finishing up the Environmental AssessmentWe anticipate having an Administrative Draft ready
14 for BIA review late next week. What is the possibility/feasibility (relating to BIA's availability to review
15 the document) of having a NOA released no later than August 20th (per a request by the Tribe)?"
16 (AR0129.00002). Chad Broussard of the BIA responded on August 2, 2013, "I would agree that this is
17 possible, but that only gives us a week and 2 days (assuming we get the report on the 9th) to revise it,
18 conduct a final review and get the NOA published." (AR0129.00002). Apparently the BIA complied
19 with the Tribe's request and the NOA for the EA was published no later than August 20, 2013 (AR
20 0131.00001 and 0132.00001 and .00002).

21 Why was the Tribe obtaining a "draft" of the FONSI one (1) month before the FONSI was
22 issued? Why is the Chumash Chairman contacting the Regional Director while the application process is
23 pending? Why is the Tribe controlling the dates for publishing the NOA for the EA? Who is running the
24 BIA? The Regional Director or the Tribe? There appears to be an inherent bias in favor of the Applicant
25 and a lack of transparency, objectivity and credibility in the Fee-to-Trust process when an interested
26 party (Applicant) receives a "draft" of the FONSI, the Tribal Chairman has apparent carte blanche access
27 to the BIA and its Regional Director, and the Tribe controls dates of publication.

28 The bias and lack of objectivity and credibility is apparent when the NOD gives first and

1 foremost attention to the “One-thousand sixty-six (1066) support letters.” (NOD, pg. 4). What the
2 Regional Director and NOD conveniently and disappointedly failed to indicate is that on November 4,
3 2013, Sam Cohen (legal advisor to the Chumash) had 1,063 letters delivered to the BIA in a notebook
4 (AR077.00001 thru AR077.01064). The 1,063 letters are form letters dated October 21, 2013. It is
5 apparent the 1,063 letters were not prepared by the individuals who wrote their name on the bottom of
6 the form letter (see AR077.00001 thru AR077.01064). More importantly, the vast majority of the letters
7 are from people who do not reside in Santa Ynez. Finally, the form letters do not address any relevant
8 environmental issue. Who actually wrote the letters? The FONSI and NOD should be vacated as there is
9 substantial evidence of an appearance of bias and lack of objectivity, transparency and impartiality.

10 **F. BIA IS TRANSFERRING LAND INTO TRUST THE TRIBE DOES NOT OWN.**

11 The BIA seeks to take 1411 acres **plus right-of-way** into trust (FONSI, pg 1). The Final EA (Pg.
12 1-1) refers to “21.9 acres of Right of Ways.” (AR0194.00008). The right-of-ways include Mora Avenue,
13 San Marco Avenue, Riordan Avenue and Torrance Avenue (see Final EA, Figure 3.1.1, AR0194.01702
14 thru AR0194.01704 and AR0080.00183 thru AR0080.00197). The above right-of-ways are dedicated
15 public roadways that are unimproved. These dedicated public roadways are owned in fee simple absolute
16 by the County and the public and dedicated as “public roadways.” The Tribe does not own the 21.9 acres
17 lying within the public roadways. These dedicated roadways were present when the Tribe purchased the
18 individual parcels. The Tribe did not purchase and does not own the “public roadways.” Each parcel in
19 the Certificates of Compliance contains a map that identifies the public roadways. (AR0080.00183 thru
20 AR0080.00197). The land described in the Certificates of Compliance is bounded by, but does not
21 include, the public roadways. The maps for all five Certificates of Compliance exclude the adjoining
22 public roadways. The BIA cannot transfer public roadways into trust as the Tribe does not own the public
23 roadways. The BIA abused its discretion in attempting to accept the above public roadways into trust.

24 The NOD refers to the subject property consisting of approximately 1,427.78 acres going into
25 trust (NOD, pg. 3). Ten (10) right-of-ways are identified and discussed in the comments in the Final EA
26 (Final EA, AR0194.01702 thru AR0194.01704). One cannot accept the Final EA’s assertion “The Tribe
27 conducted a review of the title and concluded the above-listed ROWs are easements not dedications.”
28 There is no evidence to support that conclusion and the Title Insurance report excludes the right-of ways,

1 i.e., exception No. 7 relates to “Rights of the public in and to that portion of the land lying within any
2 road, street or highway.” (AR032.00094). Moreover, the Tribe’s assertion that it will determine the
3 rights of the public on a “case by case” basis is further evidence the current state of title to the real
4 property is unknown and the Tribe does not know who may have legal rights to access the public roads.
5 This issue must be resolved prior to the land going into trust. A review of the “Aerial Parcel Map” (Figure
6 1-3, AR0194.00011) and map of Right-of-Ways (Figure 3.1.1, ARO194.01703) indicate the roadways are
7 exterior boundaries for the five parcels of Camp 4. These roadways belong to the public and must
8 remain in the public domain. These roadways cannot be taken into trust without a finding they are owned
9 by the tribe which has not been demonstrated. The Final EA, FONSI and NOD fail to properly account
10 for these dedicated public roadways and transferring these roadways into trust is error, an abuse of
11 discretion, and an impermissible taking without due process. The acreage the Tribe needs for housing
12 can be built without transferring public roadways into trust. The Regional Director abused her discretion
13 by signing the NOD without proper documentation the Tribe owns all of the land in its entirety.

14 **G. THE FINAL EA, FONSI AND NOD ARE ERRONEOUS, LEGALLY DEFICIENT AND**
15 **FAIL TO COMPLY WITH NEPA:**

16 One only needs to read the second sentence of the FONSI to find the first error and indication in
17 the FONSI the Regional Director is not sufficiently familiar with Camp 4 and its whereabouts in the
18 Santa Ynez Valley to render an impartial decision that complies with NEPA. The FONSI states in the
19 second sentence that Camp 4 is 1.6 miles “northwest” of the Tribe’s existing reservation
20 (AR0237.00001). Camp 4 is **not** northwest of the reservation; rather, Camp 4 is northeast of the Tribe’s
21 existing reservation. The Regional Director further demonstrates her lack of understanding of the
22 whereabouts of Camp 4 by stating in the NOD (Page 23) that Camp 4 is presently subject to “the full
23 civil regulatory and criminal/prohibitory jurisdiction of . . . San Diego County.” (Emphasis added).
24 Camp 4 is not in San Diego County which is about 200 miles to the south of Camp 4. These official
25 government documents upon which the Santa Ynez Valley will be irrevocably transformed don’t place
26 Camp 4 in its proper geographical location. Does the Regional Director know where Camp 4 is located?
27 Did the Regional Director read and understand the FONSI and NOD before she signed those documents?

28 The Regional Director’s NOD makes a fatal error by stating: “. . . the proposed Federal action

1 is not a major Federal action significantly affecting the quality of human environment, as defined by
2 NEPA. . . . Therefore preparation of an Environmental Impact Statement (EIS) is not required.” (NOD,
3 pg 24). The Final EA, FONSI and NOD must be vacated as they are erroneous, violate NEPA, and the
4 Regional Director abused her discretion as an EIS is required to address this Federal action that will
5 significantly affect the quality of the environment.

6 **H. The FINAL EA, FONSI and NOD violate NEPA.**

7 The record before the BIA clearly raises substantial questions about the significant
8 environmental impact the proposed development will effectuate, including the failure of the BIA to use
9 and consider the proper baseline for evaluating the potential environmental impact, i.e, the development
10 takes place in 2023, a decade after the issuance of the EA, Final EA, FONSI and NOD. The Final EA,
11 FONSI and NOD do not adequately evaluate the environmental consequences that will take place in 2023
12 and thereafter when the proposed development takes place. When questions of significant impact are
13 raised, the National Environmental Policy Act (NEPA) requires the BIA to prepare an EIS. *Natural Res.*
14 *Def. Counsel v. Duvall*, 777 F. Supp. 1533, 1537 (E.D. Cal. 1991). Once a party raises “*substantial*
15 *questions* whether a project may have significant effect on the environment,” an agency violates NEPA
16 by not preparing an EIS. *Anderson v. Evans*, 371 F.3d 475, 488 (9th Cir. 2004). Despite numerous
17 comments and objections submitted to the BIA by governmental agencies, organizations and concerned
18 residents, the Regional Director issued a FONSI based on and incorporating the inadequate Final EA that
19 was in violation of NEPA. The EA, Final EA, and comments and objections thereto, raise and establish
20 “*substantial questions*” that the proposed development is a major federal action that will significantly
21 affect the quality of the human environment and, thus, an EIS must be prepared. The impacts of the
22 proposed development are highly controversial as the project is inconsistent with existing land use, will
23 convert agricultural land uses to residential, event and tribal facility uses, will adversely impact the
24 environment and wildlife, will increase traffic and noise, and will create an urban development in a rural
25 area that will place unreasonable urban demands on an infrastructure designed and operated for a rural
26 area, among other things.

27 The size and scope of the proposed development, its negative impact on the environment and
28 surrounding communities, and its incompatibility with the Santa Ynez Valley Plan, the County’s General

1 Plan and the County's zoning and land use regulations clearly create a controversy regarding the
2 project's potential impacts. NEPA is unequivocal that when "the degree to which the effects of the
3 quality of human environment are likely to be highly controversial," an EIS is mandated. 40 C.F.R.
4 §1508.27(b)(4). Under NEPA, controversy exists when knowledgeable individuals are critical of the EA
5 and dispute its conclusions. *Found. for N.Am. Wild Sheep vs. U.S. Dep't of Agr.* (9th Cir. 1982) 681 F.2d
6 1172, 1182 (knowledgeable disagreement with EA's conclusions regarding likely effects of the project
7 warranted preparation of an EIS.) The BIA was required to exercise greater scrutiny than normal NEPA
8 cases due to the project's inconsistency with and overriding local zoning protections. Where "the
9 Federal Government exercises its sovereignty so as to override local zoning protections, NEPA requires
10 more careful scrutiny." *Md.-Nat'l Capital Park & Planning Comm'n v. U.S. Postal Serv.*, 487 F.2nd
11 1029, 1037 (D.C. Cir. 1973). The BIA's required level of scrutiny is lacking here. The BIA erred in not
12 requiring an EIS to address the "*substantial questions*" raised as to the project's potential impacts which
13 are highly controverted and the overriding of local zoning protections, among other things.

14 The Final EA, FONSI and NOD, disregarded credible and authoritative comments from Biologist
15 Lawrence Hunt in his letter of July 10, 2014 (AR0237.00220 -.00225) which states an EIS is required:

16 In general, the BIA's responses to comments in the Final EA fall short of addressing
17 deficiencies noted in my previous review letter. The general tone of the responses is "we
18 did an adequate job the first time and no new analyses are required." While the
19 magnitude of impacts maybe less under Alternative B (reduced development intensity),
20 there remain significant, unavoidable impacts to individual species, their habitats, and
21 habitat connectivity and wildlife movement associated with either project alternative.
22 **These impacts require preparation of an Environmental Impact Statement (EIS).**
23 (Emphasis added) (AR0237.00220)

21 Biologist Hunt's letter discusses the inadequate analysis in the Final EA concerning the species
22 on Camp 4 and the inadequate mitigation measures to avoid environmental impacts. Biologist Hunt's
23 letter states: "The oak tree mitigation program in Section 5.4 of the Final EA falls far short of protecting
24 or enhancing oak resources impacted by either development scenario . . ." (AR0237.00222). It appears
25 the Tribal Oak Tree Ordinance is inadequate to protect oak trees as the ordinance allows for oak trees to
26 be removed if they interfere with tribal development plans (AR0237.00221). The 50-70 oak trees to be
27 destroyed are mature and majestic (see photos, Final EA, AR0194.00119). There is not a person alive
28 today who witness a replaced oak tree reach the maturity of the oak trees to be destroyed. Biologist Hunt

1 explained using an arborist for oak habitat protection and enhancement is inadequate as a qualified
2 biologist should be used (AR0237.00223). With regard to the removal of 50-70 oak trees, the Final EA
3 does not set forth an adequate replacement ratio to ensure a “no net loss” of oak trees. The County’s
4 replacement standards require a minimum 10:1 replacement ratio (AR0237.00222). The Final EA and
5 Tribal Oak Tree Ordinance do not propose any such ratio, just a vague goal of “no net loss.” (AR0237.
6 00222). Biologist Hunt addresses the negative impact the development will have on Vernal Pool Fairy
7 Shrimp (VPFS) (AR0237.00223) and the impact of “night-lighting” on wildlife (AR0237.00224) .

8 The Final EA, FONSI and NOD, disregarded credible and authoritative comments from Santa
9 Barbara Audubon Society President Stephen J. Ferry in his letter of July 14, 2014 (AR0237.00259 -
10 .00260) which states “the assessment of biological resources in the FEA is inadequate and flawed . . .”
11 (AR0237.00259). President Ferry states on behalf of the Audubon Society:

12 SBAS again emphasizes the inadequacy of the biological survey done for this project.
13 We urge, again, that the BIA to significantly improve the survey methodology and
14 conduct a thorough, complete, and accurate survey. The BIA should also perform an
15 analysis of the impact of the project relative to the protections afforded eagles under the
16 Bald and Golden Eagle Protection Act. Then an unbiased professional assessment of the
17 environmental impact of the project should be completed.” (AR0237.00260)

18 The U.S. Environmental Protection Agency website states the following with respect to
19 Environmental Impact Statements (EIS):

20 “If the EA determines that the environmental consequences of a proposed federal
21 undertaking may be significant, an EIS is prepared. An EIS is a more detailed evaluation
22 of the proposed action and alternatives. The public, other federal agencies and outside
23 parties may provide input into the preparation of an EIS and then comment on the draft
24 EIS when it is completed.”

25 The EPA’s website also discusses the public’s important role in the NEPA process as follows:

26 “The public has an important role in the NEPA process, particularly during scoping, in
27 providing input on what issues should be addressed in an EIS and in commenting on the
28 findings in an agency's NEPA documents. The public can participate in the NEPA
process by attending NEPA-related hearings or public meetings and by submitting
comments directly to the lead agency. The lead agency must take into consideration all
comments received from the public and other parties on NEPA documents during the
comment period.”

Why did the BIA ignore a clear record that an EIS is required? The BIA has not demonstrated it
evaluated the potential impact of the proposed project in relation to the commencement of development
in 2023. The BIA has not reviewed design plans, drawings or specification for the 143 homes, tribal

1 facility, water treatment plant and sewage treatment plant for the proposed project. Appellant’s FOIA
2 request discovered there are no design plans, drawings or specifications for the above (see Exhibit “A”
3 attached hereto). The BIA must take a “hard look at the environmental consequences of its actions.”
4 *Neighbors of Cuddy Mountain v. Alexander*, 3030 F.3d 1059, 1070 (9th Cir. 2002); 42 U.S.C.
5 §4332(2)(C). Specifically, the BIA must (1) “take a ‘hard look’ at the problem, as opposed to offer bald
6 conclusions,” (2) “identify the relevant areas of environmental concern,” and (3) “make a convincing
7 case that the impact is insignificant.” *Md.-Nat’l Capital Park & Planning Comm’n v. U.S. Postal Serv.*,
8 487 F.2d 1029, 1040 (D.C. Cir. 1973). The BIA has failed to make a convincing case that the impact is
9 insignificant, especially the project’s impacts in 2023 and thereafter.

10 **1. The FINAL EA, FONSI and NOD fail to apply the proper baseline and fail to adequately**
11 **analyze or evaluate the impacts when the proposed development will take place.**

12 The proposed development will take place from 2023 to approximately 2032. The Final EA,
13 FONSI and NOD are fatally flawed and of no value in shedding light on the environmental impacts for a
14 development beginning in 2023, i.e., the BIA failed to adequately evaluate the impact at the relevant time
15 frame in 2023. BIA’s use of a present-day baseline renders the EA, Final EA, FONSI and NOD
16 erroneous as they are based on speculation and uncertainty. Agencies are required to select a proper
17 baseline to conduct an environmental assessment. (See *Half Moon Bay Fisherman’s Mktg. Ass’n v.*
18 *Carlucci*, 857 F.2d. 505 (9th Cir. 1988). The evaluation under NEPA is limited to those impacts that are
19 “reasonably foreseeable.” 40 C.F.R. §1508.7. In all instances the agency must support its conclusions in
20 an EA with “some quantified or detailed information.” *Sierra Nev. Forest Prot. Campaign v. Weingardt*,
21 376 F. Supp. 2d 984, 991 (E.D. Cal. 2005). Unfortunately, BIA cannot reasonably foresee or predict at
22 this time what impact may occur in 2023 as that is highly uncertain. In this circumstance, where the
23 proposed actions are highly uncertain or involve unique or unknown risks,” the agency cannot find there
24 is no significant impact. 40 C.F.R. §1508.27(b)(5). The Final EA, FONSI and NOD, must speculate as
25 to impacts in 2023 which makes it impossible to assess the impacts of the proposed development.

26 Tribe Resolution No. 931 states: “. . . the Tribe further agrees to comply with the terms of such
27 Williamson Act Contracts during the nine (9) year non-renewal period until the expiration of the
28 Contracts.” (AR080.00199) Moreover, the Final EA states the following with respect to construction

1 beginning in 2023 (see AR0194.00025):

2 “ . . . For the purpose of evaluating potential impacts to resources in the Final EA, it is
3 assumed that **construction of the project would begin after the grace period for the**
4 **non-renewal of the Williamson Act contracts has ended** (pursuant to Tribal
5 Resolution 931 dated July 1, 2013) and would be phased over approximately 4 to 9 years
6 as new tribal homes are needed. . . . **It should be noted that construction of the**
7 **selected project alternative would not begin until 2023**; however, for the purpose of
8 evaluating impacts to other resources (e.g. land use), the construction date was assumed
9 to be 2014 to apply conservative assumptions where appropriate.” (Emphasis added)

7 Section 3.8.3 of the Final EA, states the following concerning the application of the *Williamson Act* to
8 the Camp 4 property:

9 “All of the parcels within the project site are under active Williamson Act contracts
10 (Santa Barbara County, 2009a).” (see AR0194.00099)

11 Section 3.8.3 of the Final EA states the following with respect to the “*Nonrenewal Process*”:

12 “A notice of nonrenewal can be filed by either the local government or the private
13 landowner. Once a notice of nonrenewal has been filed, a nine-year nonrenewal period
14 is initiated. During the nonrenewal process, **land use restrictions of the contract**
15 **remain in effect** and the annual tax assessments gradually increases. **At the end of the**
16 **nine-year nonrenewal period, the contract is terminated.**” (Emphasis added, see
17 AR0194.00099).

18 Since development will not begin until 2023 and construction will be “phased over
19 approximately 4 to 9 years,” the BIA’s assessment of environmental impacts is speculative. The BIA
20 must conduct an EA in closer proximity to 2023, not 10 years before development. A 2014 FONSI
21 cannot provide a reasonable or accurate assessment of the potential impacts occurring in 2023, let alone
22 make a finding the potential impacts will not be significant. The EA, Final EA, FONSI and NOD are
23 arbitrary and capricious as they do not properly consider what conditions and impacts will exist in 2023.
24 The Tribe’s application and/or the EA and/or Final EA are premature as they must be submitted in closer
25 proximity to 2023. The FONSI and NOD violate NEPA and the Regional Director abused her discretion.

26 Appellants suggest the Final EA, FONSI and NOD do not address the impacts occurring between
27 2023 and 2032 because the impacts are unknown. The Tribe acknowledged in its response to Comments
28 included in the FONSI that the Tribe would have to speculate as to the environmental setting in 2023.
The Tribe’s response supports appellants’ contention the Final EA, FONSI and NOD are legally and
factually flawed and erroneous. The Tribe’s Response to Comments states:

1 However, there is inadequate information available to accurately determine the
2 environmental setting in 2022, and use of an inaccurate existing setting would result in
 an inaccurate or, at best, a limited assessment of impacts to resources. (AR0237.00429)

3 Using the Tribe’s own language, the Final EA, FONSI and NOD “result in an inaccurate or, at best, a
4 limited assessment of impacts to resources.” That is why an EIS is required. When the improper baseline
5 was raised in comments and objections to the Final EA and that the environmental assessment must be
6 performed closer to the development in 2023, the Tribe provided a response that disregards NEPA. The
7 Tribe’s response attached in the FONSI states: “The proposed trust acquisition is necessary at this time
8 because the Tribe wishes to exercise its rights of Tribal self-governance over its existing commercial
9 enterprises on the project site (the existing approximately 250 acres of vineyard)” (FONSI, Exhibit
10 B, AR0237.00428). The Tribe’s position is contrary to its Application(s), Final EA, FONSI and NOD
11 that assert the land is needed for 143 homes for tribal housing. The Tribe can continue to exercise its
12 right to govern over its 250 acre vineyard without the land going into trust at this time. To disregard the
13 environmental impacts in 2023 through 2032 for the sake of allowing “self-governance” over a vineyard
14 now is unreasonable and violates NEPA. The Final EA, FONSI and NOD must be vacated and an EIS
15 required.

16 **2. The FINAL EA, FONSI and NOD do not adequately address or evaluate the negative**
17 **impacts the proposed development will have on neighboring wells.**

18 Appellants are neighbors of Camp 4 and Appellants’ water is drawn from wells that are
19 immediately adjacent to Camp 4, i.e., Appellants have “neighboring wells” as indicated in the Final EA
20 (AR0194.00744). Appellant’s water is supplied by the Santa Ynez Rancho Estates Mutual Water
21 Company, Inc., of which Appellants are members. California, including Santa Barbara County, is in a
22 severe drought which recently prompted California Governor Jerry Brown to impose statewide
23 mandatory water restrictions for the first time in California history. The current drought and the severity
24 of the drought magnify the error of using a “present-day” baseline for a development taking place in 2023
25 to 2032. The Final EA expressly states the development “may adversely impact neighboring wells”.
26 (AR0194.00753). The Tribe’s Water and Wastewater Feasibility Study expressly states “Potential
27 impacts to offsite wells **may** be reduced through various options” (AR0194.00753) but the study does
28 **not** state with any degree of certainty there will **not** be potential impacts to offsite wells. The Water

1 Feasibility Study is flawed as reported by Robert Field, President of the Santa Ynez Rancho Estates
2 Mutual Water Company, in his letter of June 26, 2014, to the BIA (AR0237.0360 - .0361). Mr. Field
3 states the “analysis of the water situation is fatally flawed” (AR0237.0360). Mr. Field states:

4 Therefore, on behalf of our shareholders and home-owing customers, we respectfully
5 request that the BIA restart the environmental analysis of this massive development and
6 prepare an EIS based on an accurate baseline, accurate forecasts of reasonably
7 foreseeable development, and come to a more reasonable set of conclusions about
8 impacts. (AR0237.00361)

9 The potential development requires more exhaustive studies regarding water needs and the
10 impact on neighboring wells now and in 2023, especially in light of the uncertainty of the duration and
11 potential worsening of the present drought conditions and the uncertainty of what actual development
12 will take place. The *Updated Water and Wastewater Feasibility Analysis* in the Final EA states:

13 “Increased well production above existing conditions at the site may adversely impact
14 neighboring wells depending on where the onsite wells are located and the amount of
15 pumping that occurs.” (AR0194.00753).

16 The uncertainty of future land use and future water consumption is evident in the EA and Final EA with
17 regard to the proposed Tribal Facilities to be built. In the EA, Alternative B describes Tribal Community
18 Facilities consisting of 80,000 square feet (EA, AR0127.00018). The Final EA does not address the
19 80,000 square feet of Tribal Community Facilities but discusses 12,042 square feet (Final EA, Table 2-2,
20 AR0194.00031). It is not clear whether there is going to be 80,000 square feet of Tribal Facilities or
21 12,042 square feet. Is the water consumption based on 80,000 square feet or 12,042 square feet? As set
22 forth in the Final EA, “waste water generation for Alternative B would be greater with the development
23 of the tribal facilities.” (Final EA, AR0194.00031). The Final EA, FONSI and NOD fail to adequately
24 address the discrepancy between the proposed 80,000 square feet of Tribal Facilities in the EA and the
25 12,042 square feet of Tribal Facilities in the Final EA. Another discrepancy exists with the size of the
26 homes to be built. According to the Final EA, the proposed 143 single-family detached homes will
27 range from 3,000 to 5,000 square feet (EA, AR0194.00031). Therefore, residential construction will
28 range between 429,000 square feet and 715,000 square feet. As noted above, no design plans, drawings
29 or specifications were provided for the homes so it is not known what water consumption will be
30 involved when the homes are constructed, commencing in 2023 and continuing for 4 to 9 years (see
31 FOIA Request, Exhibit “A”). Also, water consumption will increase with the addition of the

1 “approximately 1,300 lineal descendants.” (AR0194.00014)

2 One cannot leave up to chance there will be sufficient water or that there will not be significant
3 negative impact on neighboring wells when construction begins in 2023 and thereafter. Moreover, as
4 indicated above, “there is inadequate information available to accurately determine the environmental
5 setting in 2022 . . .” (Tribe’s Response - see AR0237.00429). The NOD must be vacated as the Final
6 EA and FONSI are flawed and erroneous and based on speculation and lack of reasonable certainty.

7 An email from Tara Gomez, Winemaker/General Manager of Kita Wines/Chumash Vineyard,
8 dated January 27, 2014, to William Wyatt at Wwyatt@santaynezchumash .org (disclosed through
9 Appellant’s FOIA request) confirms the Tribe’s concerns about the drought and how she would “hate”
10 for the results of the water table assessment “to get into the wrong hands.” (See attachment “B” which is
11 a copy of the email produced in Appellant’s FOIA request). The email states the following:

12 Hi Willie,

13 I spoke with Bubba this morning and he mentioned that 2 guys came over to the vineyard
14 to assess the water table. I just wanted to verify if that request came from you. They
15 were assessing the water tables on the wells. If this testing request came from you, can
16 you please forward me the results. **I wanted to be cautious with who is on the
receiving end of these results since we are going through a drought and I hate for
these results to get into the wrong hands.** Thanks Willie! (Emphasis added)

17 The drought in Santa Barbara County is real and a serious concern to all residents, especially those with
18 “neighboring wells” to Camp 4 who will be negatively impacted by water consumption on Camp 4. Why
19 is the Winemaker of Kita Wines/Chumash Vineyard afraid of the results of the assessment of water
20 tables getting “into the wrong hands”? What will the results be in 2023 when development begins? No
21 one knows and for that reason a more detailed environmental review is required, including an EIS.

22 **3. The FINAL EA, FONSI and NOD do not adequately address or evaluate the potential**
23 **traffic impacts of the proposed development.**

24 The California Department of Transportation (Caltrans) which is the State agency responsible for
25 highway design, construction and maintenance commented on the EA and FONSI and advised the BIA
26 that the traffic study contained in the EA and relied upon in the FONSI was flawed and misrepresents the
27 “actual operating conditions.” (AR0194.01085-87 and AR0248.00001). The Caltrans letter dated
28 September 18, 2013 (AR0194.01085-87) notified the BIA the EA used an incorrect minimum operating

1 standard for both State Highway 154 and State Highway 246, i.e., the EA represents “a misapplication of
2 the Caltrans Transportation Concept Report (TCR).” (AR0194.01085). The Caltrans letter states “The
3 consultant ATE has been informed of this on many other projects and we regret to see this misapplication
4 here again.” (AR0194.01085). The Caltrans letter advised the BIA the traffic analysis in the traffic study
5 was flawed and “produced inaccurate results.” (AR0194.01085). The Caltrans letter states: “The lack of
6 a peak-hour factor is inconsistent with the methodology outlined in the Highway Capacity Manual
7 (HCM), and would only reflect better than actual operating conditions. Caltrans request a revisit of the
8 proper calculating procedures outlined in the Highway Capacity Manual. We strongly recommend that
9 the calculations follow HCM procedures and to cease using volumes in place of the required flow rate, as
10 per HCM methodology.” (AR0194.01085). The Caltrans letter also discussed the flawed analysis with
11 respect to the intersection of SR 246 and SR 154 because the “consultant has repeatedly misapplied the
12 Highway Capacity Manual.” (AR0194.01086) The Caltrans letter states: “This tactic will yield results
13 that show a better scenario than what would actually be experienced in the field. Again, Caltrans requests
14 that the consultant revisit proper calculating procedures outlined in the Highway Capacity Manual. The
15 worksheets demonstrate that a significant number of studied intersections fall below the State’s LOS
16 standard of C.” (AR0194.01086). Finally, the Caltrans letter states a “significant number of intersections
17 have been shown to be negatively impacted, having fallen below the LOS C/D cusp with the introduction
18 of the project. Yet there is not mitigation analysis for the project’s impacts. Caltrans requests a
19 reanalysis of all intersections to determine appropriate mitigation.” (AR0194.01087)

20 Caltrans sent another letter to the BIA, dated November 18, 2014, in connection with the flawed
21 traffic impact study and the failure of the FONSI to adequately address the potential traffic impacts
22 related to the project (AR0248.00001). The November 18, 2014, Caltrans letter states in part:

23 The California Department of Transportation (Caltrans) regrets that the FONSI does not
24 adequately address the concerns raised or questions posed regarding the potential traffic
25 impacts of this project. Since the traffic impact study for the project is flawed, Caltrans
26 believes that the FONSI has not adequately fulfilled the burden of the National
27 Environmental Protection Act (NEPA)” (AR0248.00001).

28 The November 18, 2014, Caltrans letter states the “traffic impact study (published May 2014) did
not analyze the existing conditions of the roundabout at SR 154 and SR 246. The Roundabout was
completed in September of 2014.” (AR0248.00001). The Caltrans letter states the Traffic Impact Study

1 employed an improper Peak Hour Factor (PHF) for intersections on SR 154 and 246 which “makes
2 traffic concentration appear lower than it may be.” (AR0248.00001). Lastly, the letter concludes “. . .
3 Caltrans looks forward to working with you to determine what the traffic impacts will be to State Routes
4 154 and 246 and determining what possible mitigations are necessary for the project.” (AR0248.00001)

5 The BIA ignored or failed to consider Caltrans’ expertise in traffic studies and Caltran’s
6 comments (AR0194.01085-87 and AR0248.00001) concerning flaws in the traffic studies. The BIA
7 cannot ignore comments from Caltrans that factually and authoritatively set forth flaws in traffic impact
8 studies which will forever negatively impact the traffic in the surrounding communities. Caltrans raised
9 a legitimate issue of significant negative environmental impact and the BIA ignored the issue. The BIA
10 abused its discretion by ignoring legitimate issues of environmental concern. The Final EA, FONSI and
11 NOD must be vacated until proper traffic studies are performed in an EIS and in compliance with NEPA.

12 **4. The FINAL EA, FONSI and NOD do not adequately evaluate the impact the development**
13 **will have on modifying the urban-wildlife interface and adverse edge effects.**

14 The letter from the California Department of Fish and Wildlife, dated October 4, 2013,
15 (AR.0194.01091-.01094) states the following with respect to the project’s “Urban-Wildlife Interface”:

16 “The proposed project site is located adjacent to large expanses of oak savannah and
17 annual grassland wildlife habitats. The proposed site and surrounding habitats support a
18 variety of wildlife species (e.g., deer, mountain lion, hawks, etc.). The current proposed
19 residential development configuration will modify the urban-wildlife interface and create
20 edge effects to surrounding habitats on and off-site.

21 Examples of adverse edge effects include invasion by non-native plants and animals,
22 chemical drift, displacement of wildlife by lighting and noise, nuisance water from
23 summer irrigation, vehicle traffic, domestic pets, and other factors. Adverse edge effects
24 can degrade natural habitats where they abut development and extend for many hundreds
25 of feet beyond the development footprint.” (AR0194.1093)

26 The Final EA, FONSI and NOD fail to adequately address the significant impact the proposed
27 development will have on modifying the urban-wildlife interface and the creation of edge effects to
28 surrounding habitats on and off-site. The Tribe’s selection of Alternative B will have a greater urban-
wildlife interface and adverse edge effects on the adjoining communities, including Appellants, as the
homes will be concentrated in greater density along the eastern boundary of Camp 4. The mitigation
efforts suggested are inadequate to protect the adjoining communities unless a significant buffer is
provided between any development and the adjoining properties which is not in the proposed

1 development. An EIS is required to further assess the urban-wildlife and the adverse edge effects.

2 **5. The FINAL EA, FONSI and NOD do not adequately evaluate the incompatibility of the**
3 **proposed project with the surrounding community.**

4 The Final EA makes a conclusory statement without any foundational support that “All
5 residential structures would be designed to [be] compatible with surrounding residential structures and
6 the rural character of the Santa Ynez Valley.” (AR0194.00029). The NOD states “. . . commenters
7 failed to provide any specific details regarding how the proposed development would be incompatible
8 and therefore failed to provide the BIA with information to further consider this potential conflict of land
9 use.” (NOD, Pg. 17). The truth is the Tribe did not disclose what alternative it was going to pursue until
10 after the comment period closed, i.e., the first indication Alternative B was the selected option was
11 conveniently disclosed in the FONSI, dated October 17, 2014 (FONSI, AR0237.00005). Neither the BIA
12 nor the Tribe has disclosed design plans, drawings and specifications for the proposed single family
13 homes ranging between 3,000 and 5,000 square feet. It is disingenuous for the BIA to claim commenters
14 failed to provide BIA with information to further consider this potential conflict of land use. What is
15 known is Alternative B consists of 143 one (1) acre parcels to be constructed immediately adjacent to
16 surrounding properties that have minimum lot sizes of approximately five (5) acres (EA, Figure 4-2,
17 AR0127.00158). One acre (1) parcels are not compatible with surrounding properties of five (5) acres or
18 more, i.e., an acre is 43,500 square feet, 5 acres is 217,500 square feet. Moreover, the FONSI states
19 “Street lighting would consist of pole-mounted lights, limited to 18 feet tall, with cut-off lenses and down
20 cast illumination to the extent feasible.” (AR0237.00010). The surrounding communities do not have
21 street lighting and the proposed street lighting will conflict with the surrounding communities. The EA
22 and Final EA failed to address the incompatibilities between the proposed development and the
23 surrounding community. The Final EA, FONSI and NOD erroneously state the proposed project will be
24 compatible with the local land use of the surrounding community.

25 **6. The FINAL EA, FONSI and NOD do not adequately evaluate the significant negative**
26 **impact the Tribal Facility and its activities will create.**

27 The tribal facility will include 250 parking spaces and will include office space for 40 tribal
28 employees and result in up to 100 events per year being held at the facility with up to approximately 400

1 attendees plus vendors (AR0194.00029). That amounts to up to 40,000 attendees, plus vendors, per year.
2 The Final EA, FONSI and NOD do not evaluate or assess the negative impact the above will cause,
3 including traffic, congestion, noise, night-time light, safety concerns, etc. Design plans and drawings
4 have not been disclosed. The Comments by the Tribe in the Final EA acknowledge the Tribal Facilities
5 are not consistent with local land use plans and existing land use (AR0194.01701). The undisclosed
6 nature and scope of these events and activities need to be further evaluated and assessed in connection
7 with their impact on noise, traffic, congestion, safety, etc. Moreover, it is not clear if the Tribal Facilities
8 will be 12,042 square feet (Final EA, AR0194.00029) or 80,000 square feet (EA, AR0127.00018).

9 **7. The FINAL EA, FONSI and NOD do not adequately evaluate the significant cumulative**
10 **negative impact the development will create.**

11 The EA, Final EA, FONSI and NOD understate the project's impact on the local environment
12 and communities, overstate the potential effectiveness of the proposed mitigation efforts, fail to disclose
13 the project's long-term, cumulative impacts including its growth-inducing impacts, potential impacts on
14 water supply and water rights, fail to disclose the project's impacts on the ability of local entities to
15 provide vital public safety services including emergency medical services and police and fire services,
16 fail to adequately and appropriately address the development's conflict with the Santa Barbara County
17 General Plan, Santa Ynez Community Plan and County of Santa Barbara land use regulations, fail to
18 properly and accurately address the financial impact and burdens on the local community and Santa
19 Barbara County (including the impact from removal of the property from the tax rolls), fail to adequately
20 address the need to take all five (5) parcels into trust, and fail to adequately address the purpose for
21 which all the land will be used (including the land for "land-banking").

22 The proposed development will cause significant negative environmental impact to biological
23 resources as stated in the Final EA (AR0194.00033) as follows:

24 "Impacts to biological resources would be greater under Alternative A due to the size of
25 the assignments. Under Alternative A, approximately 330.11 acres of critical habitat for
26 protected species would be removed from designation. Under Alternative B,
27 approximately 65.28 acres of the critical habitat would be removed from designation.
28 **Both alternatives would adversely impact water of the U.S., special-status species,**
protected oak trees, and migratory birds." (Emphasis added) (AR0194.00033)

1 An EA must fully assess the cumulative impacts of the proposed development. *Te-Moak Tribe of*
2 *Western Shoshone of Nev. v. U.S. Dept. of Interior*, 608 F.3d 592, 602-603 (9th Cir. 2010). In order to
3 assess cumulative impacts, “some quantified or detailed information is required. Without such
4 information, neither the courts nor the public . . . can be assured the [agency] provided the hard look that
5 it is required to provide.” *Te-Moak Tribe*, supra, at pg. 603.

6 Notwithstanding BIA’s failure to address the synergistic effect of the adverse impacts on special-
7 status species, protected oak trees, migratory birds, urban-wildlife interface and edge effects, water of the
8 U.S., neighboring wells, traffic, noise, night-time light, etc., the Final EA, FONSI and NOD do not
9 address the cumulative impact of the Tribe’s Casino expansion adding an additional 1,200 daily patrons
10 and the development of 6.9 acres across from the casino. BIA failed to properly evaluate the cumulative
11 impacts of these activities. Instead, BIA violated NEPA by ignoring and disregarding a record that raised
12 questions about significant environmental impacts of the development.

13 The Camp 4 development is a “Pandora’s Box” full of significant environmental consequences
14 awaiting any development not preceded by an EIS. Development is not planned prior to 2023; therefore,
15 there is sufficient time to prepare an EIS prior to any development. This “Pandora’s Box” must not be
16 opened without an EIS. No private developer would be allowed to commence such a large scale project
17 in Santa Barbara County without an EIS. Moreover, any private developer would be required to provide
18 detailed plans, drawings and specifications that specifically set forth what is going to be built rather than
19 vague potential alternatives that may or may not actually be constructed. BIA was not provided with and
20 did not review detailed plans, drawings or specifications for the development as they do not exist.

21 **8. The FINAL EA, FONSI and NOD are based on a factually and legally defective Economic**
22 **Impact Analysis, dated March 7, 2012.**

23 The Final EA contains a Final Report for An Economic Impact Analysis of the Camp 4 Housing
24 Project in the Santa Ynez Valley (Appendix K, AR0194.00527-550). The projected cost for the 143
25 residential homes ranges from a low of \$984,000 to a high of \$1.32 million per home if the construction
26 took place between 2012 and 2015 (AR0194.00541). The overall project will cost between about \$132
27 million and \$178 million. (AR0194.00532-533). The findings set forth in the Economic Impact Analysis
28 are of no value or weight based on the express disclaimer in the Report that “This analysis assumes there

1 is no delay in the entitlement process and that ground breaking begins later this year and continues
2 through 2014 or 2015.” (AR0194.00546). It is now 2015 and no ground breaking occurred; therefore, the
3 assumption upon which the analysis is based did not occur, i.e, the analysis used an improper baseline
4 and the references in the FONSI and NOD to projected economic impacts must be rejected.

5 **9. The Mitigation Measures Are Inadequate to Avoid Significant Negative Impact.**

6 There is a lack of supporting evidence the 100 or so proposed mitigation measures are sufficient
7 to avoid significant impacts. More importantly, the Final EA, FONSI and NOD fail to demonstrate how
8 the mitigation measures will be implemented, monitored and their effectiveness, if implemented. The
9 County of Santa Barbara Fire Department stated “Despite the mitigation measures . . . the fact remains
10 that the proposed size of dwellings (3,000-5,000 sq. ft.), would certainly not be classified having no
11 adverse impact’.” (AR0251.00009). The failure to demonstrate the mitigation measures will be
12 implemented, monitored and effective, requires the NOD to be vacated. The “‘perfunctory description’ or
13 a ‘mere listing’ of measures, in the ‘absence of analytical data.’” as the BIA did here, has been rejected
14 by Courts. *W. land Exch. Project v. U.S. Bureau of Land Mgmt.*, 315 F. Supp. 2d 1068, 1091 (D. Nev.
15 2004) (quoting *Nat’l Parks & Conservation Assn. v Babbitt*, 24 241 F3d, 722, 734 (9th Cir. 2001).

16 **I. THE BIA FAILED TO CONSIDER ALL FACTS UNDER 25 C.F.R. §151.10 & §151.11.**

17 The NOD failed to properly consider all factors under 25 C.F.R. §151.10 and §151.11. Due to
18 the 25 page limit placed on Opening Briefs, Appellants incorporate the arguments made by other
19 Appellants with respect to the BIA’s failure to consider all factors under 25 C.F.R. §151.10 and §151.11.

20 With respect to tribal needs for additional lands, no showing has been made the Tribe needs all
21 five (5) parcels of land (approximately 1400 acres) to build 143 homes on the one (1) acre lots set forth
22 in Alternative “B”. The tribe needs 194 acres, not 1400 acres, for the proposed housing. The housing
23 needs can be meet with one (1) of the following parcels: Parcel 1 (194.9 acres), Parcel 2 (683.3 acres),
24 Parcel 3 (257.7 acres) or Parcel 4 (260.5 acres). All parcels are not needed. With respect to the impact
25 on the State and its political subdivisions resulting from the removal of lands from the tax rolls,
26 Appellants incorporate the arguments by Appellant, County of Santa Barbara, with respect to the
27 financial impact. The Final EA, FONSI and NOD fail to adequately address the financial losses.

28 With respect to “jurisdictional problems and potential conflicts of land use which may arise” (25

1 C.F.R. §151.10(f)), the Final EA, FONSI and NOD erroneously state the proposed project will be
2 compatible with the local land use of the surrounding community. In addition to the arguments above, the
3 proposed development will convert a rural area into an urban area, place unreasonable demands on the
4 local infrastructure, and contravene local and regional land use regulations. More importantly, there is a
5 serious jurisdictional problem and land use conflict as BIA attempts to take land into trust property the
6 Tribe does not own, i.e., public and/or private roadways and/or right-of-ways (see argument above).

7 As to whether the BIA is “equipped to discharge the additional responsibilities from the
8 acquisition of the of the land in trust” pursuant to 25 C.F.R. §151.10(g), the BIA did not adequately
9 address its ability or the Tribe’s ability to discharge the duties related to law enforcement, emergency
10 services and fire protection. The BIA did not adequately address the BIA’s or Tribe’s ability to insure the
11 mitigation measures mentioned in the Final EA (AR0194.00194 -.00204) shall be fully and properly
12 performed, i.e., mitigation measures involving Land Resources, Water Resources, Air Quality, Biological
13 Resources, Oak Trees, Waters of the U.S., Federally Listed Wildlife, Nesting Migratory Birds of Other
14 Birds of Prey, Transportation and Circulation, Land Use, Public Services, Noise, and Visual Resources.
15 BIA failed to demonstrate the mitigation measures will be effective to avoid significant impacts. An EIS
16 is required to evaluate the effectiveness of the proposed mitigation measures and whether the BIA or the
17 Tribe can adequately perform the mitigation measures to avoid significant environmental impact.

18 **J. CONCLUSION.**

19 The proposed development is a major Federal action significantly affecting the quality of the
20 human environment, as defined by NEPA, and, therefore, preparation of an EIS is required. The FONSI
21 and NOD are disingenuous, erroneous and the Regional Director abused her discretion in signing the
22 FONSI and NOD. The right answer is to vacate the FONSI and NOD and direct the parties’ attention to
23 the preparation of an EIS to fully protect the environment under NEPA and to insure the integrity of the
24 fee-to-trust process for all parties involved. That is the right answer to resolve our differences.

25 DATED: June 24, 2015

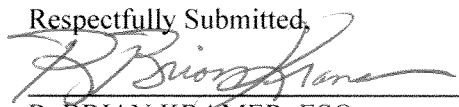
26 BY: 
27 R. BRIAN KRAMER, ESQ.
28 LAW OFFICE OF R. BRIAN KRAMER
Attorney for Appellants, Brian Kramer and Suzanne
Kramer

EXHIBIT “A”



IN REPLY REFER TO:

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

Pacific Regional Office

2800 Cottage Way

Sacramento, California 95825

APR 16 2015

FOIA-BIA-2015-00342

CERTIFIED MAIL: 7013 2630 0001 5558 1555

R. Brian Kramer
Law Office
1230 Rosecrans Avenue, Suite 300
Manhattan Beach, CA 90266

Dear Mr. Kramer:

We are in receipt of your check #1307 in the amount of \$815.50 as payment for responding to your November 17, 2014 request. Freedom of Information Act (FOIA) control number BIA 2015-00342 has been assigned to this request; please refer to this number in future correspondence. You requested the following information in relation to the Finding of No Significant Impact (FONSI) issued for the Santa Ynez Band of Chumash Indians' (Tribe) Camp4 Fee-to-Trust Application:

1. The name, educational background and qualifications of anyone involved in making the FONSI.
2. All design plans, drawings and specifications reviewed and/or considered by the BIA that relate to the 143 residences proposed for construction on the Camp4 property.
3. All design plans, drawings and specifications reviewed and/or considered by the BIA that relate to the roads proposed for construction on the Camp4 property.
4. All design plans, drawings and specifications reviewed and/or considered by the BIA that relate to any water treatment facility proposed for construction on the Camp4 property.
5. All design plans, drawings and specifications reviewed and/or considered by the BIA that relate to any sewage treatment facility proposed for construction on the Camp4 property.
6. All design plans, drawings and specifications reviewed and/or considered by the BIA that relate to any sewer system proposed for construction on the Camp4 property.
7. All design plans, drawings and specifications reviewed and/or considered by the BIA that relate to any structures/facilities proposed for construction on the Camp4 property.
8. All design plans, drawings and specifications reviewed and/or considered by the BIA that relate to the grading proposed for the Camp4 property.
9. All design plans, drawings and specifications reviewed and/or considered by the BIA that relate to the construction of any parking facilities proposed for the Camp4 property.
10. All traffic control plans reviewed and/or considered that relate to the Camp4 property.
11. All records, reports, correspondence, notes, emails, text messages, memorandum or other documents that indicate what oak trees will be cut down in connection with the development of the Camp4 property.
12. All records, reports, correspondence, notes, emails, text messages, memoranda or other documents that indicate what individuals from the BIA went to Camp4 in connection with the proposed development of the Camp4 property.

13. All records, reports, correspondence, notes, emails, text messages, memoranda or other documents that indicate all visits from the BIA to Camp4 in connection with the proposed development of the Camp4 property.
14. The amount paid to Analytical Environmental Services (AES) in connection with all services rendered in connection with the environmental assessments and reports prepared for the proposed Camp4 development.
15. The amount the BIA paid to AES in the past 10 years.
16. The contact with AES in connection with the proposed Camp4 development.
17. All records, notes, emails or memoranda in connection with any telephone call, communications, or meeting BIA had with AES in connection with the proposed Camp4 development.
18. All records, notes, emails or memoranda in connection with any meeting or visit BIA had in Santa Ynez and/or the Santa Ynez Valley to discuss the proposed Camp4 development with residents.
19. All records, notes, emails or memoranda in connection with any meeting, conversation, or visit BIA had with Santa Barbara County in connection with the proposed Camp4 development.
20. All records, notes, emails or memoranda in connection with any meeting or visit BIA had on the Camp4 property in connection with the proposed Camp4 development with residents.
21. All donations, contributions or gifts provided to the BIA or any BIA staff member from or on behalf of the Tribe from January 1, 2004 to the present.
22. All records, reports, receipts, correspondence, notes, emails, text messages, memoranda or other documents that pertain to BIA visiting or staying at the Chumash Casino or Resort in Santa Ynez, California from January 1, 2004 to the present.
23. All correspondence, reports, notes, emails, text messages, memoranda or other documents BIA received from the Tribe in connection with the proposed Camp4 development.
24. All records, notes, emails, text messages or memoranda prepared in connection with any telephone call, communication or meeting between the BIA and the Tribe from January 1, 2004 to the present in connection with the proposed Camp4 development.

As noted in our December 10, 2014 response, with respect to request numbers 2 – 9, there are no design plans, drawings, or specifications in the record other than those that are contained within or attached to the Environmental Assessment (EA), which can be found online at <http://www.chumashea.com/>. With respect to request numbers 14 and 15 there are no documents responsive to your request. With respect to request number 15, note that BIA is not required to create or compile a record in response to a FOIA request.

With respect to request numbers 1, 10 – 13, and 16 – 24, we have attached 50 files totaling 1,315 pages of responsive records requiring 17 hours of search time. The records are contained on CD and are organized by file folders tied to your numbered requests. Note, however that files within one numbered folder may be responsive to several of your numbered requests. Note also that staff are currently searching for additional documentation that might be responsive to your request and we anticipate that you will be receiving an additional response in the near future.

One file totaling 78 pages has been withheld pursuant to Exemption 3. Exemption 3 allows an agency to withhold information specifically exempted from disclosure from another statute, such as the Archeological Protection Act and the National Historic Preservation Act. 5 U.S.C. § 552 (b)(3).

23 files totaling 2,141 pages have been withheld pursuant to Exemption 5. Exemption 5 allows an agency to withhold "inter-agency or intra-agency memorandums or letters which would not be available by law to a party... in litigation with the agency." 5 U.S.C. § 552 (b)(5). The withheld documents are pursuant

to the Exemption 5, Deliberative Process Privilege. The deliberative process privilege protects the decision-making process of government agencies and encourages the frank discussion of legal and policy issues by ensuring that agencies are not forced to operate in a fish bowl.

Douglas Garcia, Regional FOIA Coordinator, was responsible for this partial denial decision. The decision was made in consultation with Kevin Mack, Assistant Regional Solicitor, and Chad Broussard, Environmental Protection Specialist.

You may appeal this response to the Department's FOIA/Privacy Act Appeals Officer. If you choose to appeal, the FOIA/Privacy Act Appeals Officer must receive your FOIA appeal no later than 30 workdays from the date of this letter. Appeals arriving or delivered after 5 p.m. Eastern Time, Monday through Friday, will be deemed received on the next workday.

You may submit your appeal and accompanying materials to the FOIA/Privacy Act Appeals Officer by mail, courier service, fax, or email. All communications concerning your appeal should be clearly marked with the words: "FREEDOM OF INFORMATION APPEAL." You must include an explanation of why you believe the BIA's response is in error. You must also include with your appeal copies of all correspondence between you and the BIA concerning your FOIA request, including your original FOIA request and the BIA's response. Failure to include with your appeal all correspondence between you and the BIA will result in the Department's rejection of your appeal, unless the FOIA/Privacy Act Appeals Officer determines (in the FOIA/Privacy Act Appeals Officer's sole discretion) that good cause exists to accept the defective appeal.

Please include your name and daytime telephone number (or the name and telephone number of an appropriate contact), email address and fax number (if available) in case the FOIA/Privacy Act Appeals Officer needs additional information or clarification of your appeal. DOI FOIA/Privacy Act Appeals Office Contact Information is included below:

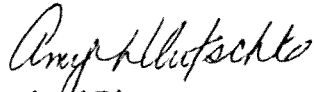
FOIA/Privacy Act Appeals Office
Office of the Solicitor
Department of the Interior
1849 C Street NW, MS-6556
Washington, D.C. 20240
Telephone: (202) 208-5339
Fax: (202) 208-6677
Email: FOIA.Appeals@sol.doi.gov

The 2007 FOIA amendments created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. You may contact OGIS in any of the following ways:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road - OGIS
College Park, MD 20740-6001 E-mail: ogis@nara.gov
Web: <https://ogis.archives.gov>
Telephone: 202-741-5770
Fax: 202-741-5769
Toll-free: 1-877-684-6448

Please note that using OGIS services does not affect the timing of filing an appeal with the Department's FOIA & Privacy Act Appeals Officer. Should you have any additional questions, please contact Douglas Garcia, Regional FOIA Coordinator, at (916) 978-6052 or Chad Broussard, Environmental Protection Specialist, at (916) 978-6165.

Sincerely,



Regional Director

Enclosure

EXHIBIT “B”



Broussard, Chad <chad.broussard@bia.gov>

Re: Water Testing/Surveying

1 message

Sam Cohen <scohen@santaynezchumash.org>

Tue, Jan 28, 2014 at 7:28 PM

To: William Wyatt <WWyatt@santaynezchumash.org>

Cc: Tara Gomez <tara@kitawines.com>, Chad Broussard <chad.broussard@bia.gov>

We have chad Broussard of bia on site feb 3-5

Sent from my iPhone

On Jan 28, 2014, at 5:39 PM, "William Wyatt" <WWyatt@santaynezchumash.org> wrote:

Will do Tara. Sorry about that. I must have neglected to give Bubba a heads up, which has been our normal protocol.

BIA is coming out next week. You have the details in an email I just sent.

Thanks,

Willie

From: Tara Gomez [mailto:tara@kitawines.com]

Sent: Tuesday, January 28, 2014 3:27 PM

To: William Wyatt

Cc: Sam Cohen

Subject: Re: Water Testing/Surveying

Hi Willie,

Thank you for the response. In the future, can I be notified so I can pass it on to my Vineyard Team. They were a little concerned with the lack of info that was given to them as they help watch over the property. They were asked to partially drain the reservoir but it was a lack of info for who it was for which is why they were concerned. Thanks Willie and much appreciated!

All the Best,

3/6/2015

DEPARTMENT OF THE INTERIOR Mail - Re: Water Testing/Surveying

Tara Gomez

Winemaker/General Manager

Kita Wines/Chumash Vineyard

805.691.1332-office

805.325.3054-mobile

805.686.0841-fax

tara@kitawines.com

On Jan 27, 2014, at 1:22 PM, William Wyatt <WWyatt@santaynezchumash.org> wrote:

Hi Tara,

I understand.

Yes, the techs are from Cleathe and Associates and they are doing well tests for the Tribe to be incorporated into an Environmental Assessment document that is part of the Fee-to-Trust process. I am not sure how public the actual well data will be, but Sam could probably shed some light on what info will remain confidential and what needs to be published.

I do believe Camp Four well productivity has already been touched on in previous tribal environmental documents, so general water resource characteristics may already be common knowledge. Most likely we will not release the raw data from the well tests to anyone other than the team working on the Fee-to-Trust project.

I hope this helps.

Willie

From: Tara Gomez [mailto:tara@kitawines.com]

Sent: Monday, January 27, 2014 11:27 AM

To: William Wyatt

Subject: Water Testing/Surveying

3/6/2015

DEPARTMENT OF THE INTERIOR Mail - Re: Water Testing/Surveying

Hi Willie,

I spoke with Bubba this morning and he mentioned that 2 guys came over to the vineyard to assess the water table. I just wanted to verify if that request came from you. They were assessing the water tables on the wells. If this testing request came from you, can you please forward me the results. I wanted to be cautious with who is on the receiving end of these results since we are going through a drought and I'd hate for these results to get into the wrong hands. Thanks Willie!

Tara Gomez

Winemaker/General Manager

Kita Wines/Chumash Vineyard

805.691.1332-office

805.325.3054-mobile

805.686.0841-fax

tara@kitawines.com

CERTIFICATE OF FILING AND SERVICE

This is to certify that a true and correct copy of this **OPENING BRIEF OF APPELLANTS, BRIAN KRAMER AND SUZANNE KRAMER**, including attachments, was served on the Assistant Secretary - Indian Affairs, United States Department of the Interior, and the parties by the method indicated below on this 24th day of June, 2015:

Via Electronic Mail and Registered Mail:

<p>Assistant Secretary - Indian Affairs U.S. Department of Interior 1849 C Street, N.W. MIB-MS-3642 Washington, D.C. 20240 f2appeals@bia.gov Kathryn_Isom-Caluse@ios.doi.gov USPS Tracking Number: 7014 0514 0000 1742 8068</p>	<p>Rebecca M. Ross, Attorney-Advisor Office of the Solicitor U.S. Department of the Interior 1849 C Street NW, MIB-MS-6513 Washington, D.C. 20240 Tel: (202) 208-4218 Fax: (202) 208-4115 rebecca.ross@sol.doi.gov USPS Tracking Number: 7014 0150 0000 6113 5372 Counsel for Pacific Regional Director, BIA</p>
<p>Pacific Regional Director Bureau of Indian Affairs U.S. Department of the Interior 2800 Cottage Way Sacramento, California 95825 Tel: (916) 978-6000 amy.dutschke@bia.gov USPS Tracking Number: 7014 0510 0000 1742 8075</p>	
<p>Amber Holderness, Esq. Deputy County Counsel 105 East Anapamu Street, Suite 201 Santa Barbara, California 93101 Tel: (805) 568-2950 Fax: (805) 568-2982 aholderness@co.santa-barbara.ca.us USPS Tracking Number: 7014 0150 0000 6113 5297 Counsel for County of Santa Barbara</p>	<p>Linda Krop, Esq. Nicole G. Di Camillo, Esq. Environmental Defense Center 906 Garden Street Santa Barbara, California 93101 Tel: (805) 963-1622 lkrop@environmentaldefensecenter.org ndicamillo@environmentaldefensecenter.org USPS Tracking Number: 7014 0510 0000 1742 8051 Counsel for Santa Ynez Alliance</p>
<p>Kenneth R. Williams, Esq. 980 9th Street, 16th Floor Sacramento, California 95814 Tel: (916) 449-9980 Kenwilliams5165@gmail.com USPS Tracking Number: 7014 0150 0000 6113 5334 Counsel for Preservation of Los Olivos</p>	<p>Ella Foley Gannon, Esq. Morgan Lewis & Bockius LLP One Market Street, Spear Street Tower San Francisco, California 94105 Tel: (415) 442-1171 ella.gannon@morganlewis.com tom.gede@morganlewis.com colin.west@morganlewis.com USPS Tracking Number: 7014 0150 0000 6113 5327 Counsel for Santa Ynez Valley Concerned Citizens</p>

<p>1 James E. Marino, Esq. 2 1026 El Camino del Rio 3 Santa Barbara, California 93110 4 Tel. (805) 967-5141 5 jmarinolaw@hotmail.com 6 USPS Tracking Number: 7014 0150 0000 6113 7 5303 8 Counsel for No More Slots</p>	<p>Wendy Welkom, Esq. Cappello & Noel LLP 831 State Street Santa Barbara, California 93101 Tel: (805) 564-2444 wwelkom@cappellonoel.com lconlan@cappellonoel.com USPS Tracking Number: 7014 0150 0000 6113 5341 Counsel for Anne (Nancy) Crawford-Hall, et. al.</p>
<p>7 Lewis P. Geysler, Esq. 8 715 Cuatro Caminos 9 Solvang, California 93463-9790 10 Tel. (805) 688-2106 11 lewpg@post.harvard.edu 12 USPS Tracking Number: 7014 0150 0000 6113 13 5310 14 Counsel for Lewis P. Geysler and Robert B. Corlett</p>	<p>J. Robert Andrews, Esq. Jared M. Katz, Esq. MULLEN & HENZELL, L.L.P. 112 East Victoria Street Santa Barbara, California 93101-2019 Tel: (805) 966-1501 Fax: (805) 966-9204 jra@mullenlaw.com USPS Tracking Number: 7014 0510 0000 1742 8037 Counsel for Appellants, Geraldine B. Shepherd, Trustee; Kenneth A. Sexton, Trustee; Wendy Shepherd; Earl B. Shepherd, Trustee; Wendell B. Shepherd, Trustee</p>
<p>14 Nancie Marzulla, Esq. 15 Marzulla Law, LLC 16 1150 Connecticut Avenue NW, Suite 1050 17 Washington, D.C. 20005 18 Tel: (202) 822-6760 19 nancie@marzulla.com 20 USPS Tracking Number: 7014 0150 0000 6113 21 5358 22 Counsel for Santa Ynez Band of Chumash Mission Indians</p>	<p>Brenda Tomaras, Esq. TOMARAS & OGAS, LLP 10755-F Scripps Poway Parkway, No. 281 San Diego, California 92131 Tel: (858) 554-0550 Fax: (858) 777-5765 btomaras@mtowlaw.com USPS Tracking Number: 7014 0510 0000 1742 8044 Counsel for Santa Ynez Band of Chumash Mission Indians</p>
<p>19 Sara Drake, Esq. 20 Office of the Attorney General 21 State of California 22 1300 I Street 23 Sacramento, California 95814 24 sara.drake@doj.ca.gov 25 linda.thorpe@doj.ca.gov 26 USPS Tracking Number: 7014 0150 0000 6113 27 5365</p>	

25 I declare under the penalty of perjury of the laws of the State of California that the above is true and correct.

26 Executed this 24th day of June, 2015, at Manhattan Beach, California.

27 
28 Marco Vidrio