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9 UNITED STATES DEPARTMENT OF THE INTERIOR
10 OFFICE OF HEARINGS AND APPEALS

11 INTERIOR BOARD OF INDIAN APPEALS

12 COUNTY OF SANTA BARBARA, a
13 Political Subdivision of the State of
14 California,

15 Appellant

16 v.

17 AMY DUTSCHKE, in her official
18 capacity as Director, Pacific Region,
19 Bureau of Indian Affairs,

20 Appellee.

Docket No: _____

[not yet assigned]

**NOTICE OF APPEAL OF
FEBRUARY 16, 2016 NOTICE OF
DECISION ON THE SANTA YNEZ
BAND OF CHUMASH MISSION
INDIANS MOONEY AND
ESCOBAR FEE-TO-TRUST
APPLICATION BY PACIFIC
REGIONAL DIRECTOR**

21 Pursuant to 25 C.F.R. Part 2 and 43 C.F.R. Part 4, the County of Santa Barbara, a
22 political subdivision of the State of California (the "County"), appeals the: (a) February
23 16, 2016 "Notice of Decision" on the Santa Ynez Band of Chumash Mission Indians
24 Mooney and Escobar Fee-To-Trust Application; and (b) supporting January 27, 2016
25 Categorical Exclusion for the acquisition.

26 ////

27 ////

1 1. The name, address and contact numbers of the Appellant are as follows:
2 The County of Santa Barbara, 105 East Anapamu Street, Suite 201, Santa Barbara,
3 California 93101, represented by the Santa Barbara County Office of County Counsel,
4 as above listed.

5 2. The decisions being appealed are: (a) the February 16, 2016 Notice of
6 Decision (“NOD”) on the application of the Santa Ynez Band of Chumash Mission
7 Indians to have five parcels of land, referred to as Assessor Parcel Numbers 143-242-
8 01, 143-242-02, a parcel containing a portion of Main Street (collectively the
9 “Mooney Property”), 143-252-01, and 143-252-02 (collectively the “Escobar
10 Property”) and totaling approximately 2.13 acres (the “Properties”), taken into trust;
11 and (b) the supporting January 27, 2016 approval of a Categorical Exclusion (“CE”)
12 for the acquisition of the Properties. A copy of the NOD being appealed is attached as
13 Exhibit A following the Statement of Reasons for the Appeal attached hereto and made
14 a part hereof. A copy of the CE was not provided to the County, but it is incorporated
15 into the NOD at page 14.

16 Said Exhibit A consists of: a 26 page document entitled “Notice of Decision,”
17 which includes a 15 page decision, 4 page distribution list, and 7 page excerpt of 43
18 C.F.R. § 4.310, *et seq.*

19 3. This Notice of Appeal has been served on presumed interested parties as
20 prescribed by 43 C.F.R. § 4.310(b) and § 4.333 and as set forth in the attached
21 Certificate of Service which lists all known interested parties, other than County
22 entities, in accordance with 43 C.F.R. § 4.332(a)(3). It also has been served on the
23 Acting Assistant Secretary - Indian Affairs, Lawrence Roberts, as prescribed by 25
24 C.F.R. § 2.20 and 43 C.F.R. § 4.332 and as set forth in the attached Certificate of
25 Service.

26 /////

27 /////

COUNTY COUNSEL
County of Santa Barbara
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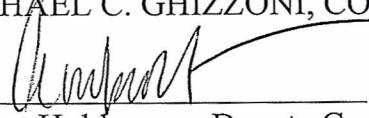
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4. The Statement of Reasons for the County's appeal is attached to this
Notice of Appeal in accordance with 43 C.F.R. § 4.332(a)(2).

Dated: March 16, 2016

Respectfully Submitted,
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13 COUNTY OF SANTA BARBARA, a
14 Political Subdivision of the State of
15 California,
16 Appellant
17 v.
18 AMY DUTSCHKE, in her official
19 capacity as Director, Pacific Region,
20 Bureau of Indian Affairs,
21 Appellee.

Docket No: _____
[not yet assigned]

**STATEMENT OF REASONS FOR
APPEAL OF FEBRUARY 16, 2016
NOTICE OF DECISION ON THE
SANTA YNEZ BAND OF
CHUMASH MISSION INDIANS
MOONEY AND ESCOBAR FEE-
TO-TRUST APPLICATION BY
PACIFIC REGIONAL DIRECTOR**

22 The County of Santa Barbara (the "County") appeals the: (a) February 16, 2016
23 "Notice of Decision" ("NOD") on the Santa Ynez Band of Chumash Mission Indians
24 Mooney and Escobar Fee-To-Trust Application; and (b) supporting January 27, 2016
25 Categorical Exclusion ("CE") for the acquisition for the following reasons and as may
26 be further described in briefs submitted hereafter. A copy of the decision being
27 appealed is attached hereto as Exhibit A.

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1 The County received notice of the NOD from the Bureau of Indian Affairs
2 (“BIA”), which incorporates the CE, on February 19, 2016. That notice indicated that
3 the decision could be appealed to the Interior Board of Indian Appeals within 30 days,
4 which the County has timely done.

5 IDENTIFICATION OF THE CASE

6 The instant appeal arises out of the Pacific Regional Director of the BIA’s
7 Notice of Decision of the BIA’s intent to accept five parcels of land totaling
8 approximately 2.13 acres in the Santa Ynez Valley of Santa Barbara County
9 (commonly known as the “Mooney Property” and “Escobar Property,” collectively the
10 “Properties”) into trust for the benefit of the Santa Ynez Band of Chumash Mission
11 Indians (“Chumash Tribe”). (Exhibit A at p. 14.)¹

12 The Mooney Property and Escobar Property are located in the middle of the
13 Santa Ynez Valley. (Exhibit B, Supplement Notice of (Non-Gaming) Land
14 Acquisition Application dated August 24, 2015 at Figure 2.) The Properties are
15 separated from the Chumash Tribe’s Reservation and other trust land north of the
16 Reservation (the “6.9 acre Property”) by Sanja Cota Avenue, Valley Street right-of-
17 way, and Highway 246. (*Id.*; Exhibits C and D attached hereto, parcel maps of the
18 Properties.) Thus, the Properties do not share any boundaries with the Reservation or
19 other trust land. (*Id.*)

20 Under County land use regulations, the Properties are zoned C-2 for general
21 commercial and are within a Design Control Overlay area. (Exhibit E, County’s
22 Comment Letter Re: Santa Ynez Band of Chumash Mission Indians: Fee-to-Trust
23 Application for Properties Known as Mooney and Escobar, dated September 23, 2015,
24 at p. 4.) They contain a public utilities easement, a public bridge, and various utility

25
26 ¹ The County is incorporating and attaching the documents cited in this Statement of
27 Reasons for the convenience of this Court and the Assistant Secretary – Indian Affairs
28 (“Assistant Secretary”) should he take jurisdiction over this appeal. The County will
further brief the issues when a briefing schedule is set for this matter.

1 fixtures. (Exhibit B at Schedule B, pp. 10-12.) In addition, the Sanja de Cota Creek, a
2 US Geological Survey “blueline creek” and a US Fish and Wildlife Service, National
3 Wetlands Inventory designated stream, runs through both properties, as does a County
4 proposed trail and bikeway. (Exhibit E at p. 3.)

5 On August 12, 2015, the BIA gave notice to the County that the Chumash Tribe
6 had submitted a Fee-to-Trust Application to the BIA for the Properties. (Exhibit F,
7 Notice of (Non-Gaming) Land Acquisition Application, dated August 12, 2015.) The
8 BIA did not provide the County or public with a copy of the Fee-to-Trust Application.²
9 On August 24, 2015, the BIA sent a supplemental notice to the County regarding the
10 Fee-to-Trust Application for the Properties, which corrected parcel information.
11 (Exhibit B.) Again, the BIA did not provide the County with a copy of the Fee-to-
12 Trust Application.

13 In the Supplemental Notice, the BIA stated that the Chumash Tribe seeks to
14 “irrigate the landscaping with recycled water generated by the Tribe’s wastewater
15 treatment plants, instead of potable water” through the trust acquisition. (Exhibit B at
16 p. 3.) Further, it stated that “[t]he purpose of the proposed fee-to-trust transfer will be
17 to maintain such uses under the jurisdiction of the Tribe for further long range
18 planning, including the ability to use its resources in a more environmentally proactive
19 way. The property will serve to enhance the Tribe’s land base, which supports tribal
20 self-determination.” (*Id.*) The BIA requested that the County provide information
21 regarding the amount of annual property taxes levied on the property; any special
22 assessment against the property in support of the County; any government services that
23 are currently provided to the property by the County; and the consistency or
24 inconsistency of proposed uses with the current zoning of the property. (Exhibit B at
25 cover letter.)

26 _____
27 ² The BIA indicated in the Notice that any interested party could view a copy of the
28 application in Sacramento, which as discussed below is inadequate under NEPA.

1 The County submitted comments on the Fee-to-Trust Application on September
2 23, 2015. (Exhibit E.) The County pointed out that the acquisition should be analyzed
3 pursuant to 25 C.F.R. § 151.11, which governs off-reservation acquisitions, as the
4 Properties are not contiguous to the Reservation or other trust lands. (*Id.* at p. 3.)

5 The County also questioned the need and purpose of the trust acquisition and
6 provided the loss of tax revenue and impact on public services. (*Id.* at pp. 3-5.)
7 Further, the County explained that the uses on the Properties were not sufficiently
8 detailed to allow a full jurisdictional and land use analysis. Uses on the Properties,
9 however, could impact proposed trails and bikeways along Highway 246, as well as the
10 Sanja de Cota Creek. (*Id.* at p. 3-4.) The County further requested environmental
11 review for the project, noting that it had not received notice of any environmental
12 review and that the removal of land from the County's and State's jurisdiction was a
13 major federal action triggering NEPA analysis. (*Id.* at p. 4.)

14 On February 16, 2016, the BIA issued an NOD for the Properties. (Exhibit A.)
15 The NOD stated that the BIA had approved a Categorical Exclusion for the acquisition
16 of the Properties on January 27, 2016 and, therefore, the BIA deemed compliance with
17 the National Environmental Policy Act ("NEPA") met. (Exhibit A at p. 14.) The CE
18 was not attached to the NOD.

19 Through this action, the County is appealing both the NOD and supporting CE.
20 As discussed below, the NOD fails to adequately address the factors required by 25
21 C.F.R. §§ 151.10 and 151.11, including the County's comments on the acquisition. In
22 addition, the NOD is based on a complete lack of environmental review in violation of
23 NEPA. Finally, the BIA failed to provide adequate information to the public prior to
24 rendering its decision in violation of NEPA.

25 STANDING TO APPEAL

26 This Court has stated that it follows the judicial doctrine of standing.
27 *Preservation of Los Olivos et al. v. Pac. Reg'l Director of BIA*, 58 IBIA 278 (2014).

1 For judicial standing, a plaintiff must show he has suffered an injury in fact, that the
2 injury is fairly traceable to the actions of the defendant, that the injury will likely be
3 redressed by a favorable decision, and that the injury is within the zone of interests to
4 be protected by the statute at issue. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-
5 61 (1992). Although this Court does not require an appellant to demonstrate standing
6 at the time of filing a Notice of Appeal, the County briefly addresses this issue at the
7 outset. The County, however, will fully brief the issue of standing if requested by this
8 Court at a later date.

9 It is well-established that a County has standing to challenge a decision to
10 accept land into trust under the fee-to-trust acquisition criteria, 25 C.F.R. §§ 151.10
11 and 151.11, and NEPA. *County of San Diego et al. v. Pac. Reg'l Director, BIA*, 58
12 IBIA 11, 23-25 (2013). As this Court has stated, the conveyance of title to land to the
13 United States in trust for a tribe “would remove the property from the County’s tax
14 rolls and from the County’s regulatory jurisdiction, both of which would adversely
15 affect what have been characterized as governmental ‘proprietary interests.’” *Id.* at 24.
16 Such an injury is traceable to the decision and would be redressed by a favorable
17 decision. *Id.* Further, a county’s land use and environmental interests are “within the
18 zone of interests protected by both the trust acquisition statute, 25 U.S.C. § 465 (and
19 the implementing regulations, §§ 151.10 and 151.11), and NEPA.” *Id.* Thus, pursuant
20 to the foregoing, the County clearly has standing to challenge the NOD and CE under
21 both the fee-to-trust regulations and NEPA.

22 STATEMENT OF REASONS FOR APPEAL

23 I. THE NOD FAILS TO PROPERLY CONSIDER THE FACTORS 24 REQUIRED BY 25 C.F.R. §§ 151.10 AND 151.11 AND IS AN IMPROPER EXERCISE OF DISCRETION.

25 When evaluating tribal requests to acquire land that is located outside of and
26 non-contiguous to a tribe’s reservation, the BIA must consider the regulatory criteria
27 outlined in 25 C.F.R. §§ 151.10 and 151.11. In issuing the NOD for Camp 4, the

1 Regional Director did not adequately consider all of those factors. Specifically, the
2 Regional Director failed to properly consider: (1) the need for the land; (2) the
3 purposes to which the land will be put; (3) the impact on the County's tax rolls; (4)
4 potential jurisdictional problems and land use conflicts; (5) the BIA's ability to
5 discharge any additional duties associated with the trust acquisition; (6) the BIA's
6 compliance with NEPA; and (7) the off-reservation location of the land. 25 C.F.R. §§
7 151.10 and 151.11. By failing to properly consider these factors, the Regional Director
8 improperly exercised her discretion.

9 **A. The Regional Director Erred by Not Appropriately Considering the**
10 **Need for the Trust Acquisition.**

11 In analyzing the need for a trust acquisition, the discretionary authority for
12 taking land into trust is limited by the statutory aims of providing lands sufficient to
13 enable Indians to achieve self-support and ameliorating the damage resulting from the
14 prior allotment policy. *Cnty. of Charles Mix v. U.S. Dep't of Interior*, 799 F. Supp. 2d
15 1027, 1039 (D.S.D. 2011), *aff'd*, 674 F.3d 898 (8th Cir. 2012). The Regional Director
16 failed to appropriately consider how taking the Properties into trust meets these aims
17 despite the Chumash Tribe's already existing 139-acre reservation, other trust land (the
18 6.9 acre Property), and other property for which the BIA has stated its intent to accept
19 the land into trust (the 1,400 acre Camp 4 Property). (Exhibit A at pp. 8-12; Exhibit E
20 at pp. 3-4.)

21 Further, the NOD failed to address that the *stated reasons* for taking the land
22 into trust are unrelated to the statutory aims and regulatory grounds governing trust
23 acquisitions. In fact, the NOD states that a "financially secure tribe" may need
24 additional trust land "to facilitate self-determination, Indian housing and economic
25 development. . . ." (Exhibit A at p. 9.) The NOD, however, does not indicate how the
26 taking of the Mooney Property and/or Escobar Property into trust will facilitate Indian
27 housing, economic development, or self-determination. The 2.13 acre Properties are

1 used for landscaping, along roadways, and thus not for any of the above purposes.
2 (*Id.*) Rather, the NOD indicates that the Tribe needs to have the land taken into trust to
3 promote environmental concerns of using recycled water, which is not a reason for
4 taking land into trust.³

5 **B. The Regional Director Erred by Not Appropriately Considering the**
6 **Purposes for the Land.**

7 The Regional Director did not consider adequately the purposes to which the
8 land would be put. (Exhibit E at pp. 3-4.) In examining the purposes for the land, the
9 Regional Director must determine the current uses of the property and then ascertain
10 the Chumash Tribe's plans for the property. *Thurston County, Nebraska v. Great*
11 *Plains Reg'l Director, BIA*, 56 IBIA 296, 307 (2013). In the NOD, the Regional
12 Director failed to set forth the current uses of the property. (Exhibit A at p. 12.) The
13 Regional Director stated that the "Tribe has no plans to change the use of the subject
14 property" and will "maintain such landscaping, access, and recycled water irrigation
15 uses." (Exhibit A at p. 12.) The NOD does not describe the scope of those uses or
16 other uses of the property such as for easement utilities and roadways. (Exhibit B at
17 Schedule B.) Further, as stated above, the Regional Director did not provide the public
18 with the Tribe's Fee-to-Trust Application outlining its uses of the Properties.

19 **C. The Regional Director Erred by Not Appropriately Considering the**
20 **Impact on County Tax Rolls.**

21 The Regional Director did not adequately consider the impact on the County of
22 removing the Mooney Property and Escobar Property from the County's tax rolls.
23 (Exhibit E at p. 5.) As the County stated in its comments, the County will lose up to
24 \$24,198 in tax revenues annually if the land is taken into trust. (*Id.*) The Regional
25 Director asserted that loss of tax was less than "1% of the total which the County

26 ³The NOD also fails to address the County's comment that it is unclear the Tribe needs
27 to take the properties into trust to use recycled water for irrigation. (Exhibit E at p. 4.)

1 expects to generate from property taxes” and therefore would be insignificant.
2 (Exhibit A at p. 12.)

3 The amount of tax loss, however, is computed for the County overall, not for
4 the Santa Ynez Valley area. (*Id.*) Furthermore, the amount of tax loss is significant
5 considering that: (a) the BIA has taken another 6.9 acres of land into trust near the
6 Reservation; (b) the BIA has stated its intent to take 1,400+ acres of land into trust in
7 the same area; and (c) the Tribe has indicated that it intends to request the BIA take
8 another approximately 350 acres of land into trust, again in the same area. (Exhibit A
9 at p. 8; Exhibit H, Proposed Tribal Land Use Map dated March 8, 2016.) All of those
10 acres would be removed from the County’s tax rolls. The removal of such tax revenue
11 is significant given that the County provides numerous services to the Valley including
12 law enforcement, fire protection, emergency medical response, and roadway access
13 and maintenance. (Exhibit E at p. 5.) Since the trust and proposed trust land is located
14 in the Valley, the Chumash Tribe and residents and visitors to the trust and proposed
15 trust areas will use the public resources and services provided by the County in the
16 Valley. The Regional Director’s failure to address these issues or provide substance or
17 context for her conclusory opinion on them is in error. *Village of Hobart, Wisconsin v.*
18 *Midwest Reg’l Director, BIA*, 57 IBIA 4, 29 (2013).

19 **D. The Regional Director Erred by Not Appropriately Considering the**
20 **Jurisdictional Problems and Land Use Conflicts Resulting from the**
21 **Trust Acquisition.**

22 The Regional Director did not adequately consider the jurisdictional problems
23 and land use conflicts resulting from the trust acquisition. The Regional Director
24 states that the trust acquisition would have no “additional impacts of trying to
25 coordinate incompatible uses” because the Chumash Tribe proposes no change in land
26 uses. (Exhibit A at p. 13.) The Regional Director, however, failed to consider that the
27 removal of the land from County jurisdiction will pose issues with respect to overall
28 land use planning for the Santa Ynez Valley. Specifically, a County trail and bikeway

1 is proposed along Highway 246 as part of that land use planning, which could be
2 impacted by removing the property from County jurisdiction. (Exhibit G, Santa Ynez
3 Valley Community Plan, Figure 15, also available at <http://longrange.sbcounty>
4 [planning.org/planareas/santaynez/documents/Maps/Proposed%20Final%20Plan/Figure](http://longrange.sbcounty/planning.org/planareas/santaynez/documents/Maps/Proposed%20Final%20Plan/Figure)
5 [%2015%20ParksRecTrails.pdf](http://longrange.sbcounty/planning.org/planareas/santaynez/documents/Maps/Proposed%20Final%20Plan/Figure%2015%20ParksRecTrails.pdf).)

6 In addition, as noted on Schedule B to the Supplemental Notice, the Properties
7 impact roadways and contain a public utility easement in favor of the County, as well
8 as various public fixtures such as a public bridge and fire hydrant. (Exhibit B at
9 Schedule B.) While the County appreciates that the Properties are taken into trust
10 subject to existing easements and encumbrances (25 C.F.R. § 151.4), removal of the
11 Properties from County jurisdiction could impact the use of those easements and public
12 services. Such conflicts, however, were not addressed in the NOD.

13 **E. The Regional Director Erred by Not Appropriately Considering**
14 **Whether Compliance with NEPA Was Met.**

15 The Regional Director failed to properly consider whether compliance with
16 NEPA was met. As discussed fully below in Section II, the CE prepared for the
17 proposed trust acquisition is inadequate. The action is a major federal action requiring
18 an environmental analysis and implicates extraordinary circumstances that preclude the
19 BIA from using a CE to avoid an analysis.

20 **F. The Regional Director Erred by Basing Its Analysis of Whether the**
21 **BIA Could Discharge Any Additional Duties on a Factual Error.**

22 The Regional Director did not adequately consider the BIA's ability to
23 discharge any additional duties associated with the trust acquisition. In addressing this
24 factor, the Regional Director stated that "emergency services to the property are
25 provided by the City and County Fire and Police through agreements between those
26 agencies and the Tribe." (Exhibit A at p. 13.) The County Fire and Sheriff agreements
27 with the Tribe, however, are for the Reservation boundaries that existed at the time of

1 execution of those agreements, not the Mooney and Escobar Properties. (Agreement to
2 Provide Fire Services Between the Santa Barbara County Fire Department and the
3 Santa Ynez Band of Chumash Indians, executed on May 12, 2015, available at
4 [https://santabarbara.legistar.com/LegislationDetail.aspx?ID=2272952&](https://santabarbara.legistar.com/LegislationDetail.aspx?ID=2272952&GUID=482E728E-791F-4765-AE93-CFFC20313065)
5 [GUID=482E728E-791F-4765-AE93-CFFC20313065](https://santabarbara.legistar.com/LegislationDetail.aspx?ID=1948365&GUID=0402A773-4448-4CA2-896A-3F4A22872152); Contract to Provide Services,
6 executed on November 4, 2014, available at [https://santabarbara.legistar.com/](https://santabarbara.legistar.com/LegislationDetail.aspx?ID=1948365&GUID=0402A773-4448-4CA2-896A-3F4A22872152)
7 [LegislationDetail.aspx?ID=1948365&GUID=0402A773-4448-4CA2-896A-](https://santabarbara.legistar.com/LegislationDetail.aspx?ID=1948365&GUID=0402A773-4448-4CA2-896A-3F4A22872152)
8 [3F4A22872152](https://santabarbara.legistar.com/LegislationDetail.aspx?ID=1948365&GUID=0402A773-4448-4CA2-896A-3F4A22872152).) Therefore, the Regional Director should have addressed how the
9 BIA would discharge additional duties related to law enforcement, emergency services,
10 and fire and wildfire protection on the Properties, but failed to do so.

11 **G. The Regional Director Erred by Not Appropriately Considering the**
12 **Off-Reservation Location of the Land.**

13 The off-Reservation location of the land was not considered in the NOD.
14 Rather, the NOD treats the Mooney Property and Escobar Property as contiguous to the
15 Reservation (which it outlines as the 139 acre Reservation and 6.9 acre Property to the
16 North). (NOD at p. 8.) The Mooney Property, however, is separated from the
17 Reservation to the south by Sanja Cota Avenue, a public roadway, and Valley Street, a
18 public right-of-way. (Exhibit C hereto.) It is separated to the North from the 6.9 acre
19 Property by State Highway 246. (*Id.*) Thus, it is non-contiguous to any Reservation or
20 trust land. Even more clearly, the Escobar Property is separated from the Reservation
21 to the West by Sanja Cota Avenue and the Mooney Property. It is separated from the
22 6.9 acre Property to the North by State Highway 246. (Exhibit D hereto.)

23 The NOD states that the Department of Interior defines “contiguous” as “two
24 parcels of land having a common boundary notwithstanding the existence of non-
25 navigable waters or a public road or right-of-way and includes parcels that touch at a
26 point.” (Exhibit A at p. 8.) The Interior Board of Indian Appeals has upheld that
27 definition in other circumstances. (*See id.*) The Department’s determination that a

1 road or right-of-way does not disrupt the contiguity between a Reservation/trust land
2 and other parcels of non-Reservation/trust land is contrary to Supreme Court and
3 federal court precedent.

4 The Supreme Court and lower federal courts have determined that certain public
5 roads and rights-of way intersecting or near a Reservation are *non-Indian fee land*, that
6 are outside the jurisdiction of a tribe. *See, e.g., Big Horn County Electric Cooperative,*
7 *Inc. v. Adams*, 219 F.3d 944 (9th Cir. 2000) (citing *Montana v. United States*, 450 U.S.
8 544, 548 (1981).) Those cases generally are analyzing the jurisdiction of a tribe when
9 a public right-of-way or road has been granted through existing Reservation or trust
10 land. *Id.* at 948-49. The cases address how the right-of-way was created, any tribal
11 consent to it, the tribe's exercise of dominion and control over it or lack thereof, the
12 public's use, and the state's control in determining whether the public road or right-of-
13 way is non-Indian fee land. *Id.* at 950. Courts find a right-of-way or road is non-
14 Indian land when the right-of-way was Congressionally created (such as a State
15 highway), the tribe has consented to the right-of-way, the tribe has failed to exercise
16 complete dominion or control over the land, the public has used the right-of-way, and
17 the state has controlled it, or a combination of some of those factors. *Id.*

18 Here, the rights-of-way and public roads are more clearly non-Indian federal
19 land than those addressed in the case law. The rights-of way existed when the Tribe
20 purchased the Mooney Property and Escobar Property in *fee simple*. They thus
21 preceded the Tribe's acquisition of the Properties and any Reservation or trust status
22 for the parcels. Therefore, the Tribe only took the Properties subject to all rights-of-
23 way, encumbrances and easements and could not exercise dominion and control over
24 them. The roads and rights-of-way thus are non-Indian land per federal law, meaning
25 Mooney and Escobar are bordered by non-Indian lands, not Reservation or trust lands.
26 Accordingly, the BIA was required to give greater scrutiny to the Chumash Tribe's
27 justification of anticipated benefits from the acquisition and greater weight to the

1 concerns raised by the County with respect to regulatory jurisdiction and tax losses. 25
2 C.F.R. § 151.11(b). The Regional Director failed to do so and therefore improperly
3 exercised her jurisdiction.

4 Based on at least the foregoing issues, the Regional Director failed to
5 adequately consider the regulatory factors governing fee-to-trust acquisitions, resulting
6 in an improper exercise of discretion. Therefore, the NOD should be vacated.

7 **II. THE CE IS INADEQUATE FOR THE TRUST ACQUISITION AND**
8 **VIOLATES NEPA AND ITS IMPLEMENTING REGULATIONS.**

9 Under the Council on Environmental Quality (“CEQ”) regulations, each agency
10 is directed to identify “categorical exclusions,” or categories of actions which it deems
11 do not, individually or cumulatively, have a significant effect on the human
12 environment and, therefore, do not require an EA or EIS. 40 C.F.R. § 1508.4. The
13 BIA has identified categorical exclusions at 516 DM 10.5I, one of which is “approvals
14 or grants of conveyances and other transfers of interests in land where no change in land
15 use is planned.” Dept. of the Interior, *Departmental Manual – Environmental Quality*
16 *Programs*, Part 516, Ch. 10, § 10.5I (effective May 27, 2014). (NOD at p. 14.) If a
17 proposed action fits within a categorical exclusion, NEPA review is not required unless
18 there are extraordinary circumstances. 40 C.F.R. § 1508.4. Extraordinary
19 circumstances are those circumstances “in which a normally excluded action may have
20 significant environmental effect.” 40 C.F.R. § 1508.4. A variety of factors are used to
21 determine significance under NEPA. 40 C.F.R. § 1508.27.

22 In addition, the DOI has specified certain criteria for determining extraordinary
23 circumstances. Those criteria include, among others, the trust acquisition will: (a)
24 have significant impacts on public health or safety; (b) have significant impacts on
25 such natural resources and unique geographic characteristics as historic or cultural
26 resources; park, recreation or refuge lands; wilderness areas; wild or scenic rivers;
27 national natural landmarks; sole or principal drinking water aquifers; prime farmlands;

1 wetlands (EO 11990); floodplains (EO 11988); national monuments; migratory birds;
2 and other ecologically significant or critical areas; (c) have highly controversial
3 environmental effects or involve unresolved conflicts concerning alternative uses of
4 available resources; (d) have highly uncertain and potentially significant environmental
5 effects or involve unique or unknown environmental risks; (e) establish a precedent for
6 future action or represent a decision in principle about future actions with potentially
7 significant environmental effects; and (f) have a direct relationship to other actions
8 with individually insignificant but cumulatively significant environmental effects. 43
9 C.F.R. § 46.215(a)-(f). When an agency decides to proceed with an action in the
10 absence of an EA or EIS, the agency must adequately explain its decision. *Jones v.*
11 *Gordon*, 792 F.2d 821, 828 (9th Cir. 1986). “An agency cannot avoid its statutory
12 responsibilities under NEPA merely by asserting that an activity it wishes to pursue
13 will have an insignificant effect on the environment.” *Id.* (quotation omitted).

14 The NOD states that the CE found “that the proposed action is not related to
15 other actions with individually insignificant but cumulatively significant environmental
16 effects,” citing the lack of a significance finding for the trust acquisitions of the 6.9
17 acre Property and 1,400 acre Camp 4 Property. (NOD at p. 8.) The BIA found that
18 since the proposed action would not change the land use for the property, it did not
19 change prior analyses and lead to a cumulatively significant impact. (*Id.* at 8-9.)

20 The trust acquisition, however, is significant or extraordinary for other reasons,
21 including, among others, due to its precedential value, its impacts on public health and
22 safety, and its impacts on the Sanja de Cota Creek, a “blue-line creek.” (Exhibit E at p.
23 3.) The NOD does not address these extraordinary circumstances. In addition, the
24 NOD fails to address the cumulative impacts of all of the trust acquisitions on land use
25 resources, public services, and regulatory planning and thus public health and safety in
26 the area regardless of any change in uses on the Properties. (Exhibit H.) The
27 acquisition still represents removal of the property from the County’s tax rolls and

1 regulatory jurisdiction. As the County stated in its comments, removing land from
2 State and County jurisdiction is a major federal action that requires analysis of public
3 services, negative impacts to the Sanja de Cota Creek, impacts to recreation, loss of tax
4 revenue, and the cumulative impacts of multiple trust acquisitions in the area.⁴
5 (Exhibit E at p. 4; Exhibit H.) Accordingly, the BIA violated NEPA by issuing a CE
6 instead of completing some environmental review for the project and it should be
7 vacated.

8 **III. THE BIA FAILED TO PROVIDE SUFFICIENT INFORMATION FOR**
9 **INFORMED PUBLIC COMMENT BY NOT PROVIDING THE**
10 **APPLICATION OR CE ANALYSIS TO THE PUBLIC.**

11 The purpose of NEPA is to ensure “that federal agencies are informed of
12 environmental consequences before rendering decisions and that the information is
13 available to the public.” *Okanogan Highlands Alliance v. Williams*, 236 F.3d 468, 473
14 (9th Cir. 2000). The legislative intent is to focus the attention of the agency and public
15 on a proposed action in order to evaluate the likely consequences of a particular
16 proposal and make an informed determination regarding that proposal. *See Marsh v.*
17 *Oregon Natural Res. Council*, 490 U.S. 360, 371 (1989). NEPA requires that relevant
18 environmental information be publicized and subjected to public scrutiny prior to an
19 agency making a decision. *See* 40 C.F.R § 1500.1(b).

20 The NOD states that the BIA approved a CE for the acquisition on January 27,
21 2016. The BIA, however, has not made that CE available to the public. Therefore, the
22 public did not have the opportunity to comment on the information and analysis
23 contained therein. Further, the BIA did not make the Fee-to-Trust Application at issue
24 available to the public prior to rendering its decision such that the public could analyze
25 and provide all comments on the application, including its environmental impacts.

26 ⁴ The County also notes that several appeals of the Camp 4 trust acquisition contend that the
27 Camp 4 acquisition has significant cumulative impacts, which issue has not been finally
28 resolved. Should it be resolved in favor of the appellants, the CE determination also is
improper on that basis.

1 Although the BIA indicated in the Supplemental Notice that any interested party could
2 view a copy of the application in Sacramento, such information was not adequate
3 under NEPA. Further, it essentially precluded review of the application prior to the
4 30-day comment period expiring for interested parties residing outside the Sacramento
5 area.⁵ The public only had the limited information provided in the Supplemental
6 Notice. Accordingly, the NOD and CE should be vacated.

7 **RELIEF REQUESTED**

8 The County of Santa Barbara, with this Appeal, requests the following relief:

- 9 1. That the February 16, 2016 NOD of the Regional Director approving the
10 Chumash Tribe's Fee-to-Trust Application and taking title to the Mooney
11 and Escobar Properties be vacated in its entirety as being erroneous and an
12 improper use of discretion;
- 13 2. That the January 27, 2016 CE issued by the Regional Director be vacated in
14 its entirety as being ultra vires and in violation of NEPA;
- 15 3. That the processing of the fee-to-trust acquisition be stayed until the issues of
16 this appeal are resolved;
- 17 4. That the NOD and CE be remanded to the Regional Director with
18 instructions that the Regional Director reconsider approval of the Fee-to-
19 Trust Application following the an environmental analysis under NEPA and
20 a proper assessment of the factors contained in 25 C.F.R. §§ 151.10 and
21 151.11; and

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26 ⁵ It also is an unreasonable limitation under the Freedom of Information Act
27 (“FOIA”). FOIA requires the BIA to make the application available in any format
28 requested by a person if readily reproducible and prohibits the BIA from imposing
unreasonable fees on a request. 5 U.S.C. § 552(a)(3)(B), (a)(4).

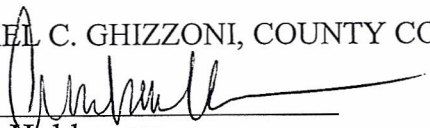
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5. That the NOD and CE be remanded to the Regional Director with instructions that the Regional Director issue the proper factual and legal findings following the appropriate environmental review and regulatory analysis.

Dated: March 16, 2016

Respectfully Submitted,

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