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UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS

ANNE (NANCY) CRAWFORD-HALL, in her personal capacity and as representative of various entities, including the San Lucas Ranch LLC and Holy Cow Performance Horses LLC, Appellant, v. **AMY DUTSCHKE,** in her official capacity as Director, Pacific Region, Bureau of Indian Affairs, Appellee.	Docket No. _____ **NOTICE OF APPEAL**

Pursuant to 25 C.F.R. Part 2 and 43 C.F.R. Part 4, Anne (Nancy) Crawford-Hall—acting in her personal capacity and as representative of various entities, which hold, manage and operate real property and businesses, including the San Lucas Ranch LLC and Holy Cow Performance Horses LLC properties and facilities—submits this notice of appeal of (1) the December 24, 2014 Bureau of Indian Affairs' ("BIA's") Notice of Decision on the application of the Santa Ynez Band of Chumash Mission Indians to have the land commonly known as "Camp 4" accepted by the United States in trust, and (2) the October 17, 2014 BIA's Finding of No Significant Impact ("FONSI") and the underlying May 2014 Final Environmental Assessment for the Proposed Santa Ynez Band of Chumash Indians Camp 4 Fee-To-Trust Project ("EA").

1. The name, address, and contact information of Appellant are Anne (Nancy) Crawford-Hall, who may be contacted through her counsel A. Barry Cappello and Wendy D. Welkom, Cappello & Noël LLP, and Paul J. Zidlicky, Sidley Austin LLP, at the contact information provided above.

2. The decisions being appealed are: the December 24, 2014 Notice of Decision on the Application of the Santa Ynez Band of Chumash Mission Indians to Have Camp 4 Accepted by the United States in Trust ("Decision"); and the October 17, 2014 FONSI and the incorporated findings of the EA. A copy of the Decision is attached as Exhibit A. A copy of the FONSI is attached as Exhibit B (exhibits to the FONSI may be found at http://www.chumashea.com). The Decision being appealed was received on December 31, 2014.

3. Ms. Crawford-Hall previously filed a Notice of Appeal and Statement of Reasons separately appealing the FONSI and underlying EA on November 21, 2014. The Board issued a pre-docketing notice and order requesting briefing on Ms. Crawford-Hall's standing to appeal the FONSI, the Board's jurisdiction to hear the FONSI appeal, and the ripeness of the FONSI appeal in the absence of a decision on the fee-to-trust application. Ms. Crawford-Hall submitted its opening brief on these

issues on December 24, 2014. Ms. Crawford-Hall subsequently informed the Board on January 5, 2015 that BIA had issued its Decision and that Ms. Crawford-Hall intended to appeal the Decision. *See* Notice of Decision by Bureau of Indian Affairs Regarding Fee-to-Trust Application (Jan. 5, 2015).

4. In its Decision, BIA cites the FONSI and EA as a basis for the Decision. Accordingly, Ms. Crawford-Hall re-asserts in this Notice of Appeal and Statement of Reasons her objections to the underlying FONSI and EA upon which the Decision relies. If this Board chooses to maintain separate dockets, Ms. Crawford-Hall requests that the Board consolidate the two appeals.

5. Ms. Crawford-Hall requests that the IBIA direct BIA to prepare an administrative record and that the administrative record be made available to Ms. Crawford-Hall and other interested parties before opening briefs are scheduled to be due. Ms. Crawford-Hall reserves her right to supplement the Statement of Reasons after the administrative record is complete and before her opening brief is filed pursuant to 43 C.F.R. § 4.311(a).

6. This Notice of Appeal has been served on interested parties as described by 43 C.F.R. §§ 4.310(b) and 4.333 and as set forth in the attached Certificate of Service, which lists all known interested parties in accordance with 43 C.F.R. § 4.332(a)(3). The Notice of Appeal also has been served on the Assistant Secretary of Indian Affairs, Kevin Washburn, as required by 25 C.F.R. § 2.20 and 43 C.F.R. § 4.332 and as set forth in the Certificate of Service.

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7. The Statement of Reasons for this appeal is attached in accordance with 43 C.F.R. § 4.332(a)(2).

Dated: January 29, 2015

Respectfully submitted,

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UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF HEARINGS AND APPEALS
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ANNE (NANCY) CRAWFORD-HALL, in her personal capacity and as representative of various entities, including the San Lucas Ranch LLC and Holy Cow Performance Horses LLC, Appellant, v. **AMY DUTSCHKE**, in her official capacity as Director, Pacific Region, Bureau of Indian Affairs, Appellee.	Docket No. _____ **STATEMENT OF REASONS FOR APPEAL**

Anne (Nancy) Crawford-Hall—acting in various capacities, including her personal capacity and as representative of various entities, which hold, manage and operate real property and businesses, including the San Lucas Ranch LLC and Holy Cow Performance Horses LLC properties and facilities[1]—appeals the Pacific Regional Director of the Bureau of Indian Affairs' ("BIA's") Notice of Decision on the Application of the Santa Ynez Band of Chumash Mission Indians to Have the Land commonly Known as "Camp 4" Accepted By the United States in Trust, Exh. A ("Decision") and the findings of the underlying Finding of No Significant Impact, Exh. B ("FONSI") and Santa Ynez Band of Chumash Indians Camp 4 Fee-To-Trust, Final Environmental Assessment, Volumes I and II (May 2014) ("EA"). Counsel for Ms. Crawford-Hall received notice of the Decision on December 31, 2014, and timely file this Notice of Appeal and Statement of Reasons. *See* 43 C.F.R. § 4.332(a).[2]

IDENTIFICATION OF THE CASE

This appeal challenges BIA's Decision to approve the Santa Ynez Band of Chumash Indians' ("Applicant's") Application for Transfer of Title for Fee Lands Into Trust ("Application") to transfer over 1,400 acres in the Santa Ynez Valley of Santa Barbara County ("Camp 4") into trust. Applicant proposes to develop this land in 2023 by constructing 143 housing units on one-acre residential lots for an uncertain number of residents, and building access roadways that would cover approximately 194 acres ("Proposed Action").[3] *See* FONSI 4–5. Among other things,

[1] Reference to Ms. Crawford-Hall herein will include all related entities as relevant.

[2] Ms. Crawford-Hall filed a separate appeal of the FONSI within 30 days of her receipt of that decision. The Board has not determined whether it will accept that appeal separate from an appeal of the Decision. Therefore, Ms. Crawford-Hall reasserts her objections to the FONSI in this appeal.

[3] The Decision recites the Applicant's position that the proposed "banquet/exhibition hall has also been removed from the proposal," Decision 18, but

this would require the removal of mature oak trees, development of wetland areas, and construction of water, wastewater, and reclamation facilities. Ms. Crawford-Hall owns and works on land that abuts Camp 4. The Proposed Action would injure Ms. Crawford-Hall and harm her use and enjoyment of her property.

BIA's Decision is invalid.[4] *First*, BIA lacks the authority to transfer the Applicant's land into trust. The Indian Reorganization Act of 1934 ("IRA"), 25 U.S.C. § 461, *et seq.*, provides BIA authority to transfer land into trust only "for the purpose of providing land for Indians," 25 U.S.C. § 465, but it limits the definition of an Indian to "all persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction," *id.* § 479. Interpreting this provision, the Supreme Court held that "'now under Federal jurisdiction' in § 479 unambiguously refers to those tribes that were under the federal jurisdiction of the United States when the IRA was enacted," *i.e.*, on June 18, 1934. *Carcieri v. Salazar*, 555 U.S. 379, 395 (2009). The Decision here is invalid because there has been no adequate showing that Applicant was a "recognized Indian tribe" and "under Federal jurisdiction" when the IRA was enacted on June 18, 1934. The Decision instead references a vote that occurred six months *after* the IRA's enactment and the establishment of the Santa Ynez Reservation, which purportedly occurred seven years *after* the IRA's enactment. Neither of these facts can support BIA's exercise of authority to transfer the Applicant's land into trust.

Second, BIA's Decision violates the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4321, *et seq.* NEPA requires federal agencies to issue an

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the Decision provides no citation for this change of position. The Application has not been amended and the FONSI, EA and other supporting documentation have not been revised to address this change.

[4] These reasons, which are summarily discussed in this Statement of Reasons, will be more thoroughly briefed when the administrative record has been provided and a briefing schedule is set.

environmental impact statement ("EIS") for any "major Federal action significantly affecting the quality of the human environment." *Id.* § 4332(2)(C). Any agency decision not to issue an EIS must be based on an environmental assessment ("EA") finding that the agency action will not result in significant impact. 42 U.S.C. § 4332. BIA's Decision is flawed for numerous reasons, including that it relies upon a flawed EA that was conducted almost ten years in advance of the Proposed Action. As such, BIA cannot base its decision on adequate and accurate information and evaluate whether the Proposed Action would significantly affect the environment. Further, BIA fails to consider the numerous adverse impacts of the Proposed Action on Ms. Crawford-Hall's property and the environment. BIA purports to rely on mitigation measures that it may not be able, as a matter of law, to implement or oversee. For these reasons, discussed below, the Decision is invalid because it fails to satisfy the requirements of NEPA.

Third, BIA failed to satisfy the other requirements to transfer land into trust. BIA must evaluate the Applicant's "need . . . for additional land," 25 C.F.R. § 151.10(b), the "impact on the State and its political subdivisions," *id.* § 151.10(e), "[t]he purposes for which the land will be used," *id.* § 151.10(c), "[j]urisdictional problems and potential conflicts of land use which may arise," *id.* § 151.10(f), BIA's ability "to discharge the additional responsibilities resulting from the acquisition of the land in trust status," *id.* § 151.10(g), and "a plan which specifies the anticipated economic benefits associated with the proposed use," *id.* § 151.11(c). In evaluating these and other factors, BIA must "give greater scrutiny to the tribe's justification of anticipated benefits from the acquisition" when the land being transferred into trust is off-reservation. 25 C.F.R. § 151.11(b). BIA does not evaluate adequately Applicant's need or purpose for transferring 1,400 acres into trust for the Applicant's intended uses for housing and accommodations. BIA improperly dismisses the impact on the State and political subdivisions as "insignificant," and incorrectly determined that a business plan was not required. BIA did not consider that the

Proposed Action's development is inconsistent with the property's agricultural nature and its conflict with the County's General Plan, the Santa Ynez Community Plan, and County regulations. BIA erred in failing to address how it would discharge these additional duties related to law enforcement, emergency services, and fire and wildlife protection. For these reasons, the Decision is invalid.[5]

STANDING TO APPEAL

Ms. Crawford-Hall has standing to bring this appeal. Although the Board does not require an appellant to show standing at the time of filing a statement of reasons, Ms. Crawford-Hall briefly addresses the injury that the Decision causes. Ms. Crawford-Hall will brief the issue of standing once this matter has been docketed and a briefing schedule issues or if such briefing is requested by the Board.

Ms. Crawford-Hall brings this challenge because BIA's Decision inflicts environmental, aesthetic, and economic injuries on Ms. Crawford-Hall. *See* Declaration of Anne (Nancy) Crawford-Hall (December 23, 2014) 3 (Exh. C) ("Crawford-Hall Declaration"). Her family has been raising cattle, horses, and crops sustainably since 1924. Ms. Crawford-Hall's properties located directly south and southwest of Camp 4 include a horse breeding facility, cattle ranching operations, and crops and range which form a critical part of the grazing rotation that her family has practiced for generations. Ms. Crawford-Hall regularly stays on the property, enjoying the natural beauty of the land, its open spaces and wildlife and its surroundings. *Id.* at ¶ 20-24; *see Lujan v. Defenders of Wildlife*, 504 U.S. 555, 562-63 (1992) ("[T]he desire to use or observe an animal species, even for purely esthetic purposes, is undeniably a cognizable interest for purpose of standing"). She relies on water obtained from the local wells, including using that fresh and clean water

[5] Ms. Crawford-Hall reserves her rights to raise constitutional and other objections to the Decision and FONSI that the Board is not authorized to address. *See, e.g., State of Iowa & Bd. of Supervisors of Pottawattamie Cnty. v. Great Plains Reg'l Dir.*, 38 IBIA 42, 45 (2002).

resource for personal use and to water her cattle and horses and grow her crops. Crawford-Hall Declaration ¶ 21, 23-25. These properties have conservation easements which restrict their uses to low intensity agriculture in furtherance of environmental considerations. The Proposed Action will inhibit Ms. Crawford-Hall in multiple ways, including her management of the use of this property for horse and cattle grazing and agriculture, her enjoyment of the land abutting Camp 4, her economic interests associated with the properties she manages, and her interests in preserving and maintaining this historic property.

San Lucas Ranch consists of approximately 9,100 acres of scenic agricultural property whose aesthetic value would be jeopardized by the development of 143 one-acre residential lots directly across the road from Ms. Crawford-Hall's property. The proposed construction of these buildings inflicts injury. *See, e.g., Tyler v. Cuomo*, 236 F.3d 1124, 1132 (9th Cir. 2000) (effects on neighboring land by number and size of buildings establish standing). The 415 (or more) new residents and eight hundred additional visitors each week would cause further harm by depleting Ms. Crawford-Hall's (and the Valley's) water supply. *See* Crawford-Hall Declaration ¶ 26; *Laub v. U.S. Dep't of Interior*, 342 F.3d 1080, 1087 (9th Cir. 2003) (allegation of impact on water supplies is sufficient to establish injury in fact). The significant increase in traffic and noise caused by the additional residents and visitors will disturb the peaceful and quiet environment of San Lucas Ranch and interfere with Ms. Crawford-Hall's enjoyment of the land. *See* Crawford-Hall Declaration ¶ 28. The increased traffic, building and development, destruction of wetland, removal of local vegetation, increased water runoff and pollution and waste, and the paved roads and buildings will interfere with Ms. Crawford-Hall's cattle and horses and will affect the local habitat, including the wildlife that reside on and around Ms. Crawford-Hall's property. *Id.* at ¶¶ 5, 30, 35. Further, while the new residents' use of water will deplete the wells relied upon by Ms. Crawford-Hall, the proposed development of parking lots and buildings and the use of water for landscaping will cause water to

drain onto Ms. Crawford-Hall's property and pollute her crops and grazing fields. *Id.* at ¶¶ 26, 35. These environmental impacts also will interfere with Ms. Crawford-Hall's management responsibilities associated with the San Lucas Ranch and her environmental and economic interests of the San Lucas Ranch LCC and Holy Cow Performance Horses LLC. *Id.* at ¶¶ 31-43.

PROCEDURAL BACKGROUND

Ms. Crawford-Hall raised concerns regarding the Application in comments to BIA.[6] In particular, Ms. Crawford-Hall objected that the BIA lacked the authority to transfer land into trust because the Applicant was not a "recognized Indian tribe now under Federal jurisdiction." Letter from A. Barry Cappello, Cappello & Noël LLP, to Amy Dutschke, Reg'l Dir., Bureau of Indian Affairs 2-8 (Dec. 28, 2013) ("December 2013 Comment Letter"). She also objected that BIA failed to satisfy the requirements of NEPA and that the Applicant had not demonstrated adequate need for the land, that the Application failed to address the impact on the State and political subdivisions, and that the Application was improper because it did not contain a business plan. *Id.* at 8-12.

On July 11, 2014, Ms. Crawford-Hall submitted additional comments to BIA in response to the EA. Letter from A. Barry Cappello, Cappello & Noël LLP, to Amy Dutschke, Reg'l Dir., Bureau of Indian Affairs (Jul. 11, 2014) ("Comment Letter P9"). She objected that the proposed development and fee-to-trust transfer "will cause significant adverse environmental impacts which are inadequately examined in the EA, and must be thoroughly evaluated in an Environmental Impact Statement (EIS)." *Id.* at 1. Ms. Crawford-Hall also objected that BIA's decision to transfer the

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[6] Ms. Crawford-Hall submitted comments to BIA on July 11, 2014, December 28, 2013, October 16, 2013, and October 4, 2013 and in Comment Letter P994, Comment Letter P311, Comment Letter P283, and Comment Letter P194. She also adopted the comments and analyses of the County of Santa Barbara and other commenters to the BIA's EA and FONSI and the Application.

land would affect land use, water resources, agriculture, wildlife habitat, air quality, traffic, public resources and services, and public safety. *Id.* at 2-4.

Instead of conducting a required EIS, BIA issued a FONSI, Exh. B. BIA concluded that the Proposed Action is not a "federal action significantly affecting the quality of the human environment" and that "an Environmental Impact Statement (EIS) is not required." FONSI 1. Ms. Crawford-Hall challenged this decision as unlawful under the NEPA and, on November 21, 2014, filed a Notice of Appeal and Statement of Reasons before this Board.[7]

Despite these objections, on December 24, 2014, BIA issued notice of its intent to accept the Application and transfer the subject property into trust. *See* Decision 25. Ms. Crawford-Hall subsequently informed the Board on January 5, 2015 that BIA had issued its Decision and that Ms. Crawford-Hall intended to appeal the Decision. *See* Notice of Decision by Bureau of Indian Affairs Regarding Fee-to-Trust Application (Jan. 5, 2015).

In this Statement of Reasons, Ms. Crawford-Hall highlights that BIA: (i) lacks authority to transfer land into trust; and (ii) has failed to consider the requirements to transfer land into trust. Ms. Crawford-Hall also re-asserts her objections to the underlying FONSI and EA upon which the Decision relies.[8] For the reasons stated herein, BIA's Decision is invalid and should be reversed.

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[7] The separate appeal of the FONSI was required as a result of the lack of clarity in the administrative appeal process and based on prior IBIA rulings. The Board has not determined whether it will accept that appeal separate from an appeal of the instant Decision, and Ms. Crawford-Hall therefore reiterates the grounds for appeal from the FONSI and Final EA in this appeal.

[8] The Decision acknowledges (at 17), the Applicant withdrew its Tribal Land Consolidation and Acquisition Area ("TCA"). *See Cnty. of Santa Barbara v. Pac. Reg'l Dir.*, 58 IBIA 57 (2013). To the extent, however, that the Applicant's TCA remains relevant to BIA's Decision, Ms. Crawford-Hall would reiterate her prior challenge to the Applicant's TCA.

STATEMENT OF REASONS

I. BIA Lacks Statutory Authority To Grant The Application.

Before transferring land into trust, BIA must consider "the existence of statutory authority for the acquisition and any limitations contained in such authority." 25 C.F.R. § 151.10(a). Here, the IRA authorizes the Secretary of Interior to transfer land into trust "for the purpose of providing land for Indians." 25 U.S.C. § 465. That authority, however, is limited. The term "Indian" means "all persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction." *Id.* § 479. In *Carcieri v. Salazar*, the Supreme Court held "that the term 'now under Federal jurisdiction' in § 479 unambiguously refers to those tribes that were under the federal jurisdiction of the United States when the IRA was enacted in 1934." 555 U.S. at 395. The IRA was adopted on June 18, 1934. Thus, BIA could have the authority under § 465 to transfer land subject to regulation by state and federal governments into trust only for a "recognized Indian tribe" that was "under Federal jurisdiction" when IRA was enacted on June 18, 1934.

This limitation on BIA's authority must be viewed against background and fundamental principles of federalism. BIA asserts that the transfer of land into trust divests states and local governments of control over criminal and civil proceedings and the authority to collect taxes, impose zoning requirements, and regulate the environment on these transferred lands. When, as here, the exercise of federal authority intrudes upon traditional state powers, one must "start with the assumption that the historic police powers of the States" are not displaced "unless that was the clear and manifest purpose of Congress." *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947). That presumption applies to the Secretary's authority to divest state and local governments of regulatory authority under the IRA. Thus, to preserve the "healthy balance of power between the States and the Federal Government," *New York v. United States*, 505 U.S. 144, 181 (1992), BIA is obligated to ensure that any transfers of property into trust do not extend beyond this narrowly circumscribed

authority, *see Solid Waste Agency of N. Cook Cnty. v. U.S. Army Corps of Eng'rs*, 531 U.S. 159, 172-73 (2001) (holding that deference to agency action does not apply to an "administrative interpretation [that] alters the federal-state framework by permitting federal encroachment upon a traditional state power").

As applied here, the IRA's requirements cannot be met: the Applicant was not (1) a "recognized Indian tribe" that was (2) "under Federal jurisdiction" when IRA was enacted on June 18, 1934.[9]

A. The Applicant Was Not A "recognized Indian tribe" On June 18, 1934.

BIA can only take land into trust for "members of any recognized Indian tribe now under Federal jurisdiction" when the IRA was enacted on June 18, 1934. 25 U.S.C. § 479; *Carcieri*, 555 U.S. at 395; *see* December 2013 Comment Letter 3-5. The language "now under Federal jurisdiction" in § 479 modifies the phrase "recognized Indian tribe." As a result, the IRA was intended to benefit only those Indians federally recognized at the time of the IRA's passage. *See Maynor v. Morton*, 510 F.2d 1254, 1256 (D.C. Cir. 1975) ("the IRA was primarily designed for tribal Indians, and neither [the plaintiff] nor his relatives had any tribal designation, organization, or reservation at that time," when the IRA was enacted). Indeed, the Supreme Court has held that "Congress' use of the word 'now' in this provision, without the accompanying phrase 'or hereafter,' . . . provides further textual support for the conclusion that the term refers solely to events contemporaneous with the Act's enactment." *Carcieri*, 555 U.S. at 389. This finding is reinforced by the

[9] To the extent that BIA also relies upon the Indian Land Consolidation Act, 25 U.S.C. § 2202, that Act does not expand BIA's authority in this case to take land into trust. As the Supreme Court held in *Carcieri v. Salazar*, "[t]he plain language of § 2202 does not expand the power set forth in § 465 [of the IRA], which requires that the Secretary take land into trust only 'for the purpose of providing land for Indians.' Nor does § 2202 alter the definition of 'Indian' in § 479, which is limited to members of tribes that were under federal jurisdiction in 1934." 555 U.S. at 394.

Supreme Court's earlier decision in *United States v. John*, in which the Court noted that the IRA "defined 'Indians' . . . as 'all persons of Indian descent who are members of any recognized [in 1934] tribe now under Federal jurisdiction,' and their descendants who then were residing on any Indian reservation."[10] 437 U.S. 634, 650 (1978) (modification in original). Section 479 of the IRA requires that the "Indian tribe" must have been both recognized and under federal jurisdiction on June 18, 1934.[11]

Further, federal courts of appeals have interpreted the term "recognized" as a political act that confirms the tribe's existence as a distinct political entity. Specifically, the D.C. Circuit has held that "[t]he most important condition [to the receipt of federal benefits under the IRA] is federal recognition, which is 'a formal political act confirming the tribe's existence as a distinct political society, and institutionalizing the government-to-government relationship between the tribe and

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[10] Other courts have reached this conclusion. *See United States v. State Tax Comm'n of Miss.*, 505 F.2d 633, 642 (5th Cir. 1974) ("The language of Section 19 positively dictates that tribal status is to be determined as of June, 1934, as indicated by the words 'any recognized Indian tribe now under Federal jurisdiction' and the additional language to like effect."); *New York v. Salazar*, No. 08-cv-644, 2012 WL 4364452, at *14 (N.D.N.Y. Sept. 24, 2012) ("[T]he operative question for a court or the Agency in determining whether trust authority may properly be exercised is whether the tribe in question was federally recognized and under federal jurisdiction in 1934 as opposed to whether the tribe was federally recognized and under federal jurisdiction at the time of the trust decision."); *City of Sault Ste. Marie v. Andrus*, 532 F. Supp. 157, 160 n.6 (D.D.C. 1980) (IRA's recognition requirement requires federal recognition as of 1934).

[11] The legislative history confirms this reading of the IRA. The Senate and House sponsors of the IRA stated that Indians would not be "recognized" unless "they are enrolled at the present time," Hearing on S. 2755 before the S. Comm. on Indian Affairs, 73rd Cong. 264 (1934), and that the IRA only "recognizes the status quo of the present reservation Indians" and prohibits those "who are not already enrolled members of a tribe" from claiming benefits, 78 Cong. Rec. 12,056 (1934) (Congressional debate on Wheeler-Howard Bill).

the Federal government.'" *Cal. Valley Miwok Tribe v. United States*, 515 F.3d 1262, 1263 (D.C. Cir. 2008) (quoting *Cohen's Handbook of Federal Indian Law* § 3.02[3]m at 138 (2005)). "The federal government has historically recognized tribes through treaties, statutes, and executive orders." *Id.* As the Board has recognized, "Congressional authority over Indian affairs under the Constitution is based on tribes' political status, and if the Department has determined that a group is not a political entity with whom the Federal Government has a government-to-government relationship, *that group cannot be considered a 'tribe' within the meaning of the IRA*." *Estate of Elmer Wilson, Jr.*, 47 IBIA 1, 11 (2008) (emphasis added).

Judicial decisions at the time of the IRA's passage reinforce this understanding of "recognized" as a formal political act. In 1933, the Supreme Court held that only Congress had the power to determine "'to what extent, and for what time [Indian tribes] shall be recognized and dealt with as dependent tribes requiring the guardianship and protection of the United States.'" *United States v. Chavez*, 290 U.S. 357, 363 (1933) (quoting *United States v. Sandoval*, 231 U.S. 28, 46 (1913)). More recently, the Supreme Court construed the term "federally recognized" in the IRA as designating a political status. *See Morton v. Mancari*, 417 U.S. 535, 553 n.24 (1974).

The Applicant does not qualify as "Indian[s]" within the meaning of 25 U.S.C. § 479 because, as of June 18, 1934, the Tribe was not a political entity with whom the federal government had a government-to-government relationship. Rather, the Applicant was not recognized by the federal government within the meaning of the IRA until almost 30 years later, when on August 23, 1963, the Secretary of the Interior accepted the Santa Ynez Band of Mission Indians' initial Articles of Organization. In an earlier April 2005 fee-to-trust application, the Applicant acknowledged that "[t]he Tribe i[s] organized under the Articles of Organization

which were adopted by the membership on November 17, 1963." *See* Fee-to-Trust Application for the Santa Ynez Band of Chumash Mission Indians 9 (Apr. 25, 2005) ("2005 Santa Ynez Application"). According to that earlier application, the Applicant was "recognized" by the federal government in 1963 when its "Articles of Organization were approved by the Secretary of the Interior on August 23, 1963 and later approved as a Constitution in 1964 and amended in 1980." *Id.*[12] The Applicant did not claim federal recognition through treaties, statutes, or executive orders; nor did it claim that it had a political status or a government-to-government relationship with the federal government prior to 1963. *Id.*

BIA lacks the authority to transfer the Applicant's land into trust. Indeed, the Decision does not address whether the Applicant was recognized within the meaning of the IRA at any time—before, during, or after the passage of the IRA—let alone whether the Applicant was a recognized Indian tribe as of June 18, 1934. Because the Applicant was not "recognized" by the federal government at the time of the IRA, it is ineligible for the transfer of title for fee lands into trust under § 465.

B. Applicant Was Not "under Federal jurisdiction" On June 18, 1934.

BIA lacks the authority to take trust title for the Applicant for the separate reason that the Applicant was not "under Federal jurisdiction" in June 1934. 25 U.S.C. § 479; *Carcieri*, 555 U.S. at 395; *see* December 2013 Comment Letter 5-6. According to the Department of Interior, "under jurisdiction" means "federal obligations, duties, or authority over the tribe" that must have "remain[ed] intact in

[12] The Application includes a notice from Federal Register that the BIA had recognized the "Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California," but this notice dates from April 24, 2013. The Applicant provides no evidence that it was a recognized tribe and under federal jurisdiction in June 1934.

1934." Department of Interior, Response to Questions for the Record (Oct. 24, 2011). The Decision points only to two facts to support its assertion that the Applicant was "under Federal jurisdiction" at the time of the IRA's passage: the Secretary of the Interior's holding an election six months after June 18, 1934; and a "Departmental Order" establishing the Santa Ynez Reservation pursuant to the Mission Indian Relief Act. Decision 3. Neither of these facts establishes that the Applicant was "under Federal jurisdiction" on June 18, 1934.

First, the Decision states, "[t]he Secretary's act of calling and holding this election for the Tribe [on December 15, 1934] informs us that the Tribe was deemed to be 'under Federal jurisdiction' in 1934." Decision 3. That conclusion is mistaken. Under the IRA, the vote to accept or reject the application of the IRA is valid only if the vote is performed by "a majority of the adult Indians," where "Indian" is defined as "all persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction" in June 1934. 25 U.S.C. §§ 478, 479. The fact that a vote was held *after* the passage of the IRA on *December* 18, 1934 is not sufficient to establish that the parties voting in December 1934 were under federal jurisdiction on *June* 18, 1934. As explained in *Carcieri*, the IRA's limitation to Indian tribes "now under federal jurisdiction" required a showing that the parties were under federal jurisdiction when the IRA was enacted. Indeed, the Fifth Circuit has rejected an argument similar to this, holding that the vote of a tribe "in 1935 to accept the benefits of the Act was not authorized by" the IRA because Indian tribes "could not confer upon themselves the benefit of a law in which, by its very terms, they had not been included." *United States v. State Tax Comm'n of Miss.*, 505 F.2d 633, 642 (5th Cir. 1974).[13] For this reason, the fact that a vote was held after passage of the IRA

[13] The Supreme Court in *United States v. John* disagreed with the Fifth Circuit's ultimate conclusion that the Choctaw Indians were not "Indians" under the IRA based on its analysis of separate language in § 479. 437 U.S. 634, 650 (1978) (holding instead that the Choctaw were of one-half or more Indian blood). In doing so, the *John* Court did not question the Fifth Circuit's rejection of the 1935 election;

cannot show that the Applicant was under federal jurisdiction when the IRA was passed.

Contrary to the Board's prior rulings,[14] the calling for and holding of an election in December 1934, does not establish, without more, that an Indian tribe was "under Federal jurisdiction" when the IRA was enacted *on June 18, 1934*, *Carcieri*, 555 U.S. at 389. As noted above, the Applicant did not establish a governing body until 1963 and could not have engaged in any government-to-government relations at the time the IRA was enacted. Further, the federal government could not exercise any control or authority over the Applicant because it had no property interests or rights in the Santa Ynez land—which remained under the exclusive control of the State of California—until at least December 1941.

Second, the Decision states that the "Santa Ynez Reservation was originally established pursuant to Departmental Order under the authority of the Act of January 12, 1891 (26 Stat. 712)." Decision 3. That is wrong. While the Decision does not identify the date of the referenced Departmental Order, the Applicant has confirmed that its described reservation was not established until 1941, seven years after the enactment of the IRA. The Mission Relief Act of 1891 authorized a commission to, with the approval of the President and the Secretary of the Interior, set aside lands for bands and villages in California to be used as reservations. 26 Stat. 712. The commission, however, never exercised its authority to set aside land for the Applicant. Rather, until 1941, the land on which Native Americans resided in the

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to the contrary, the *John* Court affirmatively analyzed whether the Choctaw "were recognized as such by Congress and by the Department of Interior, *at the time the Act was passed.*" *Id.* (emphasis added).

[14] *See, e.g.*, *Shawano Cnty. v. Acting Midwest Reg'l Dir., BIA*, 53 IBIA 62, 71-72 (2011); *Village of Hobart* v. *Acting Midwest Reg'l Dir., BIA*, 57 IBIA 4, 23-24 (2013); *cf.* Memorandum from Michael Berrigan, Assoc. Solicitor, Div. Indian Affairs, to Amy Dutschke, Pac. Reg'l Dir., Bureau of Indian Affairs 6 (May 23, 2012).

Santa Ynez Valley was under the exclusive control of the Catholic Church. As the Applicant stated in its April 2005 fee-to-trust application, "[i]t was not until *December 18, 1941* that the area, approximately 100 acres of land, was officially acquired by the U.S. Government to be held in trust for use as the Santa Ynez Reservation." 2005 Santa Inez Application 7 (emphasis added). Thus, it was not until years *after* June 18, 1934 that the United States allegedly "officially acquired" the land which Applicant states is held in trust for it as a reservation. The Decision's assertion, then, that the "Santa Ynez Reservation was originally established pursuant to Departmental Order" on December 18, 1941 does not support the conclusion that the Applicant was under federal jurisdiction on or before June 18, 1934.

The Decision fails to cite any other evidence for its conclusion that the Applicant was "under Federal jurisdiction" when the IRA was enacted on June 18, 1934. Decision 3. BIA lacks the authority to grant the Application, and the Decision should be reversed.

II. BIA's Decision Violates NEPA.

BIA is obligated to determine whether the Proposed Action would have a significant impact on the environment and community. "If the action is expected to have significant impacts, or if the analysis in the EA identifies significant impacts, then an EIS will be prepared." Div. of Envtl. & Cultural Res. Mgmt., Dep't of the Interior, 59 IAM 3-H, *Indian Affairs National Environmental Policy Act (NEPA) Guidebook* § 8.1 (Aug. 2012). This implements the critical component of NEPA that an EA is only acceptable where the agency makes a finding of no significant impact. 42 U.S.C. § 4332. Indeed, "only in those obvious circumstances where no effect on the environment is possible, will an EA be sufficient for environmental review required under NEPA." *Natural Res. Def. Council v. Duvall*, 777 F. Supp. 1533, 1538 (E.D. Cal. 1991); *Anderson v. Evans*, 371 F.3d 475, 488 (9th Cir. 2004).

An EA for the Proposed Action was prepared in August 2013. Ms. Crawford-Hall and others commented on the EA, objecting that the EA failed to consider and

evaluate adequately the environmental impact of the Proposed Action. BIA responded to the comments it received and issued a Final EA in May 2014. Ms. Crawford-Hall and others commented on the Final EA, raising many of the same concerns, which the Final EA had failed to address. BIA responded to the comments and issued a FONSI based on the Final EA. In its Decision to transfer land into trust, BIA adopted the reasoning of the EA and FONSI.

BIA's reliance on the reasoning of the EA and FONSI is flawed. As an initial matter, BIA attempts to conduct this environmental assessment now—almost ten years before any development would occur. This is not permitted under NEPA. Any such evaluation of environmental impact necessarily must rely on "inadequate" and "inaccurate" information. FONSI 5. Throughout the FONSI, BIA acknowledges the significant impacts of the Proposed Action and fails to adequately consider others. Further, BIA purports to rely on mitigation measures that it may not be able, as a matter of law, to implement or oversee. As such, Ms. Crawford-Hall respectfully requests that the Board vacate the Decision and only permit BIA to conduct its assessment of environmental impact at such time that it can review and consider accurate information—that is, some reasonable period of time before the proposed development.

A. BIA Cannot Conduct The Required Environmental Assessment.

BIA improperly uses a present-day baseline to assess the environmental impacts of a development that will not occur until 2023. FONSI 4–5; EA, Vol. I 2-9, 4-8, 4-10; Comment Letter P9 6-9. Agencies are required to select a baseline to conduct an environmental assessment. *See Half Moon Bay Fishermans' Mktg. Ass'n v. Carlucci*, 857 F.2d 505, 510 (9th Cir. 1988). However, by selecting a baseline that is almost 10 years in advance of any proposed development, the FONSI and EA are fraught with speculation and uncertainty that undermine any formal analysis of expected impacts on the environment. This timing arises out of the Applicant's stated commitment to comply with the Williamson Act, which designates Camp 4 as

agricultural property until 2022. EA, Vol. I 2-9. Thus, the Proposed Action is to transfer the land into trust now but not actually start building on the land until 2023. *Id.*

Given these circumstances, BIA cannot conduct its evaluation of whether the Proposed Action would "significantly affect[]" the environment. 42 U.S.C. § 4332(2)(C). This evaluation under NEPA is limited to those impacts that are "reasonably foreseeable." 40 C.F.R. § 1508.7 (assessing the "cumulative impact" of proposed actions). In all instances, however, the agency must support its conclusions in an EA with "some quantified or detailed information." *Sierra Nev. Forest Prot. Campaign v. Weingardt*, 376 F. Supp. 2d 984, 991 (E.D. Cal. 2005). But here, everything is uncertain and nothing is "reasonably foreseeable" or "quantified or detailed." In this circumstance, where the proposed actions are "highly uncertain or involve unique or unknown risks," the agency cannot find there is no significant impact. 40 C.F.R. § 1508.27(b)(5).

The Executive Office of the President, Council on Environmental Quality ("CEQ")—the agency that implemented NEPA—makes this very point. NEPA documents that extend beyond five years are, according to CEQ, subject to reevaluation because their conclusions are inherently suspect. *Cf.* Forty Most Asked Questions Concerning CEQ's NEPA Regulations, 46 Fed. Reg. 18026-01 (Mar. 23, 1981) (EIS documents that are "more than 5 years old" must be carefully reexamined and evaluated to determine if they are still accurate and satisfy NEPA's criteria). Thus, BIA's attempt to assess the environmental impact of an action that will not commence for nearly ten years is inherently flawed. By the time the development commences, the BIA's determinations would require reevaluation.

As of today, BIA cannot properly explain any consequences that would transpire ten years from now. Indeed, the FONSI and EA only can offer vague speculation of what may happen to the land when it is developed; even the plans themselves are not specified. Critically, the FONSI and EA do not explain the

housing project or proposed development in any level of detail. This makes it impossible to assess the impact of the Proposed Action. BIA acknowledges as much. It states that "there is inadequate information available to accurately determine the 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." FONSI 5. Given this acknowledgement, BIA's Decision should be vacated.

The attempt to conduct an analysis of environmental impact now of what would happen almost ten years from now simply cannot be done without guesswork. Indeed, there is no legitimate reason to transfer this land from fee to trust now. Instead, BIA only should be permitted to proceed some reasonable period of time before the proposed development. Only then can BIA utilize "[]adequate information to accurately determine" the environmental impact of the proposed action.[15]

B. BIA Is Required To Conduct An Environmental Impact Statement.

BIA further cannot demonstrate that it has evaluated the potential impact of such a massive project. FONSI 5–13; Comment Letter P9 2-4. BIA must take a "hard look at the environmental consequences of [its] actions." *Neighbors of Cuddy Mountain v. Alexander*, 303 F.3d 1059, 1070 (9th Cir. 2002); 42 U.S.C. § 4332(2)(C). Specifically, BIA must (1) "take a 'hard look' at the problem, as opposed to [offer] bald conclusions," (2) "identify the relevant areas of

[15] Further, if BIA proceeds with an EIS, as it must in this case, BIA's statement that "there is inadequate information available to accurately determine" the environmental impact of the Proposed Action would trigger the requirement to investigate the "incomplete or unavailable" information. 40 C.F.R. § 1502.22. If this information cannot be obtained, which BIA acknowledges it cannot, the regulation requires BIA to, at the very least, identify the information that is incomplete or unavailable, state its relevance to any findings of adverse impacts, summarize the existing credible evidence that is available, and evaluate impacts based on theoretical approaches or research methods. 40 C.F.R. § 1502.22(b). Any attempt to conduct such analysis now would be entirely speculative.

environmental concern," and (3) "make a convincing case that the impact is insignificant." *Md.-Nat'l Capital Park & Planning Comm'n v. U.S. Postal Serv.*, 487 F.2d 1029, 1040 (D.C. Cir. 1973). Here, BIA has failed to evaluate adequately the consequences of the Proposed Action. However, even if one were to attempt to evaluate the Proposed Action under today's circumstances, the Proposed Action must be viewed to significantly affect the environment.

1. The Proposed Action would significantly affect neighboring property.

If the proposed development were to commence today, it would have a negative impact on land use, water resources, agriculture, wildlife habitat, air quality, public resources and services, and public safety. FONSI 5–13; Comment Letter P9 3-9. Neither the FONSI nor the EA adequately considers these issues or the fact that the development on 1,400 acres of property that previously only has been used for agricultural purposes would have a spillover effect on neighboring properties. The dense residential development would have a direct impact on increased noise, traffic, lights, and pollution. It would increase the potential for trespassing, vandalism, and littering. It would result in an additional at least 223 tons of solid waste per year. BIA does not consider the fact that the landfill the Applicant intends to use is closing in 2026. Further, adding at least 415 residents and 800 visitors every weekend would strain law enforcement resources and fire and emergency services.

The paving of roads and parking lots and the removal of protected oak trees would affect wildlife, as would the increased human activity on the proposed sites. The Proposed Action would jeopardize the endangered Vernal Pool Fairy Shrimp, by affecting 330 acres of designated critical habitat. The development also would affect wetland areas that are critical for wildlife and central to migratory patterns. And the paved roads, parking lots, and buildings would produce water runoff that would negatively affect Ms. Crawford-Hall's enjoyment of her property, and would

jeopardize its continuing use for grazing. Indeed, the grey or polluted water runoff, after draining across Ms. Crawford-Hall's property, dumps directly into the Santa Ynez River and affects the entire valley environment, including endangered steelhead. The development would negatively affect Ms. Crawford-Hall's enjoyment of the neighboring properties and their scenic views.

The Proposed Action also would negatively affect traffic. Both alternative plans contemplate use of two roads as access points. EA, Vol. I 3-55–3-59. These are narrow rural roads that lack a paved shoulder and consist of tight turns and blind spots. Further, construction would necessitate a fleet of trucks bringing building supplies and transporting land fill. As the FONSI contemplates, this would require traffic signals and the addition of roundabouts. FONSI 19–20.[16] The increased traffic would have a negative impact and harm the surrounding area and the Santa Ynez Valley, making it more difficult for commuters, increasing pollution, slowing emergency response times, and affecting the safety of drivers using roads not designed for heavy traffic.

These negative impacts would harm Ms. Crawford-Hall's enjoyment of her land, reduce the value of Ms. Crawford-Hall's land and inhibit her ability to use the land for farming and cattle grazing. Further, the Proposed Action would harm Ms. Crawford-Hall's quality of life and reduce the historic value of her property. Only an EIS could evaluate the context and intensity of the environmental impact of the sweeping changes articulated by the Applicant in proposing to transfer more than 1,400 acres and the development over a hundred housing units and Tribal facilities on land that is presently zoned for agricultural uses. The EA acknowledges that the Proposed Action "would adversely impact water of the U.S., special-status species,

[16] However, BIA does not adequately consider that these suggested improvements are subject to approval by the California Department of Transportation.

protected oak trees, and migratory birds." EA, Vol. I 2-17. For these reasons, the Decision should be vacated.

2. The Proposed Action would significantly affect water resources.

The FONSI and EA fail to address major concerns associated with water supply. *See, e.g.*, FONSI 5–13; Comment Letter P9 4-6. The EA acknowledges that the Proposed Action "would adversely impact water of the U.S.," EA, Vol. I 2-17. and that "[i]ncreased well production above existing conditions at the site may adversely impact neighboring wells depending on where the onsite wells are located and the amount of pumping that occurs," EA, Vol. II 2-19. Despite this, the FONSI and EA fail to address significant water resource issues.[17]

The EA and FONSI do not consider current water use and how the Proposed Action would affect the area, which is in the midst of a drought and may be in the midst of a drought ten years from now. Only belatedly does the FONSI state as a mitigation measure that recycled water would be used at the proposed sites. FONSI at 6, 13. But the FONSI does not describe the proposed recycling program, how it would be implemented, and the specific impact it would have on the surrounding area. FONSI at 6. The FONSI simply asserts that the recycling program would reduce the acre-feet per year of water use by 30 and 34 for Alternatives A and B, respectively, without stating how it would accomplish such an ambitious objective. *Id.* Instead of adequately addressing these issues, the FONSI and EA consider figures on water usage that are artificially low.

The FONSI and EA also fail to address that substantial pumping of water would affect the aquifer system and negatively affect areas beyond Camp 4. With the

[17] BIA also failed to consider the implications of the transfer of land into trust on federal land use law and whether this doctrine should apply to Indian water claims to ground and surface water. The Applicant's potential claim to priority water rights should have been considered by BIA before taking the land into trust.

additional housing for 1,300 individuals and additional commercial activities at the expanded casino, the new museum, the additional office space, and the Tribal facilities, the Applicant has proposed building new wells. However, BIA has not sufficiently evaluated the safe yield on these wells. In fact, the proposed use of these wells would increase the overdraft significantly. Further, the water that the Applicant plans to use for irrigation would drain into and pollute adjacent parcels to the south of Camp 4, including Ms. Crawford-Hall's property.

Finally, the FONSI and EA rely on inaccurate data regarding rainfall amounts and misstate the withdrawal of water that would occur on the property. And BIA fails to consider the impact on neighboring wells. Instead, the FONSI introduces a mitigation measure for recycling water that artificially reduces the impact without explaining how water would be recycled and evaluating the effectiveness of the mitigation effort. BIA must conduct an EIS to fully consider the Proposed Action's impact on area water resources.

3. The Proposed Action must be evaluated with greater scrutiny.

The FONSI and EA do not address adequately the incompatibility of the Proposed Action with the surrounding property and the conflict posed with the County's General Plan, the Santa Ynez Valley Plan, and the County's zoning and land use regulations. *See, e.g.*, FONSI 5–13; Comment Letter P9 7-8. These restrictions on land use are designed to protect the environment. The FONSI and EA fail to address what would happen if these restrictions are eliminated. In particular, BIA fails to consider adequately the lack of agricultural buffers, the increase in pests, and risk that weeds and diseases would spread to neighboring agricultural properties.

The level of scrutiny required here is even greater than the normal NEPA case. Where "the Federal Government exercises its sovereignty so as to override local zoning protections, NEPA requires more careful scrutiny." *Md.-Nat'l Capital Park &*

Planning Comm'n, 487 F.2d at 1037. Federal regulations state that, if BIA grants the fee-to-trust application, the land would be exempt from state and local laws. 25 C.F.R. § 1.4(a) ("none of the laws, ordinances, codes, resolutions, rules or other regulations of any State or political subdivision thereof limiting, zoning or otherwise governing, regulating, or controlling the use or development of any real or personal property, including water rights, shall be applicable").[18]

Development of Camp 4 would have significant impacts on the surrounding communities. The EA without foundation asserts that the Proposed Action "would not contribute to the conversion of surrounding agricultural land." EA, Vol. I 4-69. But this is the very purpose of the Proposed Action: to permit the Applicant to convert agricultural land into residential housing and Tribal facilities, which conversion would have a further impact on surrounding agricultural land. In short, the FONSI and EA fail to address the Applicant's commitment and ability to limit the environmental impact that the Proposed Action would have on neighboring properties. BIA's FONSI should therefore be vacated.

BIA cannot proceed without an EIS if for no other reason than because the impact of the proposed development is "controversial." 40 C.F.R. § 1508.27(b)(4). Under NEPA, controversy exists when knowledgeable individuals are critical of the EA and dispute its conclusions. *Found. for N. Am. Wild Sheep v. U.S. Dep't of Agric.*, 681 F.2d 1172, 1182 (9th Cir. 1982). In response to the proposed and final EAs, BIA received substantial comments in opposition from the County of Santa Barbara, the Environmental Defense Center, California Coastal Protection Network, California Department of Transportation, and other expert agencies, organizations, and

[18] The FONSI and EA also must be evaluated under a more stringent standard because it is an off-reservation proposal. *See, e.g.*, Letter from A. Barry Cappello, Cappello & Noël LLP to Amy Dutschke, Reg'l Dir., Bureau of Indian Affairs, 2-3 (Oct. 4, 2013).

individuals that objected to the EA's finding of no significant impact to agricultural resources, waste, water, public services, traffic, and the environment.

C. The FONSI's Mitigation Measures Are Not Properly Evaluated.

The BIA's finding that the Proposed Action would not result in significant impacts is based in significant part on more than 100 mitigation measures. In fact, the FONSI acknowledges that mitigation measures are required to "reduce significant impacts to a less-than-significant level." FONSI 11. The FONSI relies upon measures that the Applicant would need to adopt to comply with a "National Pollutant Discharge Elimination Permit" for construction runoff, develop a "Storm Water Pollution Prevention Plan," retain "[e]xisting vegetation . . . where possible," adopt "[t]emporary erosion control measures," schedule construction to "minimize land disturbance during peak runoff periods," develop a "spill prevention and countermeasure plan," and the list goes on for 12 pages, identifying over 100 different measures. FONSI 7-19. Only with such measures in place could otherwise significant impacts even arguably be reduced to less than significant impact. However, none of these mitigation measures is properly evaluated or even likely enforceable. *See, e.g.*, FONSI 5–13; Comment Letter P9 at 9-10.

Guidance from CEQ states that the ability to monitor compliance with mitigation measures is "essential" to a finding of no significant impact. Mitigation measures should be "carefully specified in terms of measureable performance standards or expected results, so as to establish clear performance expectations." Memorandum for Heads of Fed. Dep'ts and Agencies from Nancy H. Sutley, Chair, Council of Envtl. Quality 8 (Jan. 14, 2011). CEQ further states that "*[m]onitoring is essential in those important cases where the mitigation is necessary to support a FONSI and thus is part of the justification for the agency's determination not to prepare an EIS.*" *Id.* at 10 (emphasis added). But in this case, monitoring would not be adequate.

The FONSI's hundred-plus mitigation measures are fundamentally flawed because BIA may not be able to conduct *any* monitoring after the land is transferred into trust. Contrary to CEQ's admonition that agencies have a "continuing duty," *id.*, BIA outsources all of its monitoring to the Applicant and an unspecified "General Contractor." The FONSI and EA, however, fail to address whether the Applicant would be under an obligation to implement these mitigation measures and the requisite monitoring practices. And BIA may not have authority to monitor or restrict the Applicant's land use to ensure that the mitigation measures are actually implemented. Indeed, the IBIA has suggested that "[n]othing in the Restoration Act, 25 U.S.C. § 465, or 25 C.F.R. Part 151 authorizes the Department to impose restrictions on the [Applicant's] future use of land which is taken into trust." *City of Lincoln v. Portland Area Dir.*, 33 IBIA 102, 107 (1999).

The FONSI is inadequate because it fails to demonstrate how or if the mitigation measures would be implemented and if they would be effective even if implemented. Courts have repeatedly rejected what BIA has done here, which is to provide a "'perfunctory description' []or a 'mere listing' of measures, in the absence of 'supporting analytical data.'" *W. Land Exch. Project v. U.S. Bureau of Land Mgmt.*, 315 F. Supp. 2d 1068, 1091 (D. Nev. 2004) (quoting *Nat'l Parks & Conservation Assn'n v. Babbitt*, 241 F.3d 722, 734 (9th Cir. 2001)). Without such supporting documentation and evidence, the mitigation measures here fail to remedy the significant impacts that BIA acknowledges.

In short, the "significant impact levels" that the FONSI states would be present without mitigation measures render the document fundamentally flawed. Because BIA may not be able to monitor or enforce any of the mitigation measures and does not provide any support that they would be effective even if they could be implemented and monitored, the FONSI must be vacated.

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D. The FONSI And EA Fail To Evaluate The Cumulative Impact Of The Proposed Action.

NEPA requires that agencies consider the cumulative impact of the proposed action. *See, e.g.*, FONSI 10–13; Comment Letter P9 3, 7. Cumulative impact is defined as "the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions *regardless of what agency (Federal or non-Federal) or person undertakes such other actions*." 40 C.F.R. § 1508.7 (emphasis added). These cumulative impacts "must be fully analyzed in any EA." *Kern v. U.S. Bureau of Land Mgmt.*, 284 F.3d 1062, 1078 (9th Cir. 2002).

For example, BIA fails adequately to consider the Applicant's expansion of the casino complex. The Applicant states that these expansions and renovations will include: "addition of up to 215 hotel guest rooms; addition of up to 584 parking spaces; expansion of the casino to ease overcrowding; and renovation of the existing casino and hotel to address overcrowding and circulation issues." Notice of Adoption and Approval from Santa Ynez Band of Chumash Indians to Office of Planning & Research and Bd. of Supervisors of Cnty. of Santa Barbara (Sept. 22, 2014), *available at* http://www.chumashee.com/wp-content/uploads/2014/09/Notice-of-EE-Adoption-Approval-Signed.pdf. This expansion will bring an additional 1,200 visitors per day to the area surrounding Camp 4 and its neighboring property. *See* Final Environmental Evaluation Santa Ynez Band of Chumash Indians Hotel Expansion Project 3-42 (Sept. 2014).[19]

[19] The FONSI also does not adequately assess (and the EA does not even address) the 6.9 acres that the Tribe plans to develop for a cultural center, museum, park, gift shop, and offices that would draw visitors and workers into the area. *Pres. of Los Olivos & Pres. of Santa Ynez v. Pac. Reg'l Dir., Bureau of Indian Affairs*, 58 IBIA 278, 278 (2014).

The EA makes reference to the expansion of the casino and recognizes that it is a "cumulative impact." *See* EA, Vol. I, 4-57–4-72 . However, BIA does not address in any detail the environmental impact that an additional 1,200 patrons per day in combination with the additional expected visitors to the cultural center, museum, park, gift shop, and offices and the additional residents in the proposed facilities would have on the environment, water resources, agriculture, wildlife habitat, air quality, traffic, public resources and services, and public safety. This development, when combined with the Proposed Action, would have a profound impact on neighboring properties like that of Ms. Crawford-Hall's. Because the EA and the FONSI fail adequately to consider the other development projects of the Applicant, they are "inadequate under NEPA" and must be vacated. *See Kern*, 284 F.3d at 1075-76.

E. The FONSI And EA Fail To Address Reasonable Alternatives.

BIA must evaluate and describe all reasonable alternatives to the proposed federal action. 42 U.S.C. § 4332(2)(E); 40 C.F.R. § 1508.9(b). Failure to do so renders the EA inadequate. *Friends of Yosemite Valley v. Kempthorne*, 520 F.3d 1024, 1038 (9th Cir. 2008) ("The existence of a viable but unexamined alternative renders an [EA] inadequate."). Further, the agency must not simply "blindly adopt[] the applicant's goals," but must "allow for the full consideration of alternatives required by NEPA." *Envtl. Law & Policy Ctr. v. U.S. Nuclear Regulatory Comm'n*, 470 F.3d 676, 683 (7th Cir. 2006).

Here, BIA failed to evaluate reasonable alternatives to the proposed fee-to-trust transfer. FONSI 5–6; Comment Letter P9 6-7. The FONSI and EA do not consider or evaluate whether the Applicant can meet its objectives without transferring the land into trust. Given that the Applicant does not propose to build on the land until 2023 and that it presently owns the land at issue, the failure to evaluate alternative ownership structures renders the EA inadequate. BIA is under an obligation to consider whether it can "accomplish[] the same results by entirely different means."

Envtl. Def. Fund, Inc. v. Corps of Eng'rs of U.S. Army, 492 F.2d 1123, 1135 (5th Cir. 1974). The Applicant's objectives could equally be met by the transfer of less property into trust or the delay of such transfer until 2023 when the actual environmental impact is known and understood. *See W. Land Exch. Project*, 315 F. Supp. 2d at 1096 (declaring an EA invalid where it failed to consider "why [the agency] did not consider less intensive development"). By failing to evaluate these alternatives, BIA violated NEPA, and the Decision must be vacated.

F. BIA Failed To Provide An Opportunity For Public Comment.

BIA's addition of new information and, in particular, new mitigation measures that have not been subject to public comment is inappropriate and violates NEPA. *Envtl. Prot. Info. Ctr. v. Blackwell*, 389 F. Supp. 2d 1174, 1204-05 (N.D. Cal. 2004); *Sierra Nevada Forest Prot. Campaign v. Weingardt*, 376 F. Supp. 2d 984, 991 (E.D. Cal. 2005) ("the public [should] be given as much environmental information as is practicable"). This violation requires that the Decision be vacated. NEPA requires BIA to "involve environmental agencies, applicants, and the public, to the extent practicable." 40 C.F.R. § 1501.4(b). The FONSI, however, contains mitigation measures that had not been analyzed or referenced before. It provides new information and analysis of water recycling and usage, solid waste, biological resources, mitigation measures for the Vernal Pool Fairy Shrimp and California red-legged frog, the provision of a police department operated by the Applicant, and other information and mitigation measures that had not been publicly disclosed or available for public comment. FONSI 1, 7, 11-17; Letter from A. Barry Cappello, Cappello & Noël LLP, to Amy Dutschke, Reg'l Dir., Bureau of Indian Affairs (Nov. 19, 2014); Letter from Mona Miyasato, Cnty. Exec. Officer, County of Santa Barbara, to Amy Dutschke, Reg'l Dir., Bureau of Indian Affairs 6 (Nov. 14, 2014) ("November 2014 Comment Letter"). The FONSI also cites and relies upon new information and analysis from the U.S. Fish and Wildlife Service and State Historic Preservation Office that had not been subject to public review and comment. FONSI

1; Letter from A. Barry Cappello, Cappello & Noël LLP, to Amy Dutschke, Reg'l Dir., Bureau of Indian Affairs (Nov. 19, 2014); November 2014 Comment Letter 6. Standing alone, this violation should require that the Decision be vacated.

III. BIA's Decision Is Erroneous Because Applicant Failed To Satisfy The Remaining Regulatory Requirements.

In addition to the requirements to consider its authority to transfer land into trust and ensure compliance with NEPA, BIA also must evaluate the Applicant's "need . . . for additional land," 25 C.F.R. § 151.10(b), the "impact on the State and its political subdivisions," *id.* § 151.10(e), "[t]he purposes for which the land will be used," *id.* § 151.10(c), "[j]urisdictional problems and potential conflicts of land use which may arise," *id.* § 151.10(f), whether BIA is "equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status," *id.* § 151.10(g), and "a plan which specifies the anticipated economic benefits associated with the proposed use," *id.* § 151.11(c). The Decision fails properly to address any of these requirements. BIA does not consider why 1,400 acres are needed for the Applicant's intended uses on a limited portion of this land for housing and accommodations. Because the Application involves property that is not contiguous with the reservation, BIA must give "greater scrutiny" to the Applicant's asserted justification and purpose. 25 C.F.R. § 151.11(b). Based on these failings, BIA improperly exercised its discretion, and the Decision should be vacated and reversed.

A. There Has Been No Showing By The Applicant Of The "Need" or "Purpose" For The Fee-To-Trust Transfer.

The Applicant asserts a need for 1,400 acres, currently owned by the Applicant, to be taken into trust. BIA states that this land is needed to: provide housing; bring land within the Applicant's jurisdictional control; meet the Applicant's "long range needs"; meet the Applicant's needs for "future generations, land banking"; increase the Applicant's "ability to exercise self-determination"; and preserve cultural resources. Decision 20. The Decision fails to demonstrate why

taking the land into trust is necessary for any of these purposes. December 2013 Comment Letter 6-8.

As an initial matter, neither BIA nor the Applicant has explained why the Applicant, like any other fee owner, cannot utilize the relevant local land use structure to accomplish its housing goals. Indeed, the County of Santa Barbara has indicated that the Applicant's housing goals could be processed through that land use development structure. At the same time, the County's regulations could properly govern any development to limit the impact on the environment and would provide consistency and accountability to the neighboring community on critical land use issues. As it stands, however, the Applicant merely expresses a desire to exempt itself from such restrictions. This is not an adequate need or legitimate purpose under the IRA.

Further, the Decision does not explain any of the other asserted needs of the Applicant. The Decision asserts without any support that the land is required for the Applicant's "long range needs" and that "invaluable cultural resources" must be preserved, without specifying what these plans are or what cultural resources will be preserved. Decision 20-21. Moreover, BIA fails to explain why ownership of property is insufficient to fulfill the Applicant's needs for self-determination and land-banking. The Decision only points to the fact that it will be exempt from State and local regulations—regulations that are in place to protect the environment and protect the public. There is no need besides exemption from state and local requirements to support the transfer of land into trust. BIA had insufficient information on which to assess the Applicant's alleged justification at all, let alone under the required heightened standard for lands located separate and apart from a reservation. As such, the Applicant cannot meet its burden to establish a "need" to transfer the land into trust.

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B. BIA' Decision Fails Adequately To Consider The Impacts On Relevant Political Subdivisions.

The loss to the County in taxes would be from *at least* $35 million (if there is no development) to in excess of $275 million under the Proposed Action over the next 50 years. *See* December 2013 Comment Letter 8-9; Letter from Mona Miyasato, Cnty. Exec. Officer, County of Santa Barbara, to Amy Dutschke, Reg'l Dir., Bureau of Indian Affairs 2-3 (Dec. 17, 2013). Without evaluation or consideration, BIA inappropriately dismisses this impact on the local tax base as "de minimis" and "insignificant." Decision 22. Quite the contrary, the transfer of land into trust will have a significant impact on the County's ability to collect taxes, especially when combined with the increased demand that will be imposed on public resources from the additional at least 415 residents and the additional visitors to Camp 4. This will have a detrimental impact on the Santa Barbara County Sheriff Department's and Fire Department's ability to respond to the needs of Santa Barbara community members. As a result, Ms. Crawford-Hall's dependence on the County's protection of public safety and provision of other public resources will be jeopardized.

C. BIA Failed To Consider The Jurisdictional Problems And Land Use Conflicts Resulting From The Trust Acquisition.

BIA must consider the "[j]urisdictional problems and potential conflicts of land use which may arise." 25 C.F.R. § 151.10(f). Camp 4 is presently zoned for agricultural use: AG-II-100. Decision 22. The development of residential units and supporting infrastructure is inconsistent with this designation and the surrounding land. Indeed, such development would contravene the County's General Plan, the Santa Ynez Community Plan, and County regulations. BIA fails to consider such conflict and the Proposed Action's affects on surrounding properties and the health, safety, and regulatory problems that will arise. December 2013 Comment Letter 8-9.

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D. BIA Failed To Consider Whether It Is Equipped To Discharge Additional Responsibilities.

BIA must consider whether it is "equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status." 25 C.F.R. § 151.10(g). In addressing this issue, BIA concluded that emergency services would be provided by the County Fire and Police Departments through agreements with the Applicant. Decision 23. But these agreements are for services on the current reservation and do not extend to Camp 4. *See* Letter from Mona Miyasato, Cnty. Exec. Officer, County of Santa Barbara, to Amy Dutschke, Reg'l Dir., Bureau of Indian Affairs 23-25 (Jul. 11, 2014). BIA erred in failing to address how it would discharge these additional duties related to law enforcement, emergency services, and fire and wildlife protection on Camp 4.

E. BIA's Decision Is Invalid Because The Applicant Failed To Include The Required Business Plan.

Where off-reservation land is acquired for "business purposes," the fee-to-trust applicant must "provide a plan which specifies the anticipated economic benefits associated with the proposed use." 25 C.F.R. § 151.11(c). Here, the Applicant proposes to utilize the land "for economic pursuits (vineyard and a horse boarding stable)." Application for Transfer of Title for Fee Lands into Trust Submitted by the Santa Ynez Band of Chumash Mission Indians 10 (Nov. 2013); Decision 22. And yet, the Applicant fails to provide the required business plan. *See* December 2013 Comment Letter 12. BIA asserts that such a plan is not required because these plans are "on-going business operations." Decision 24. The regulations, however, do not provide an exception to the requirement to supply a business plan. Instead, the requirement applies whenever "land is being acquired for business purposes." 25 C.F.R. § 151.11(c). For this reason, the Application is deficient, and BIA's Decision must be vacated.

F. BIA Failed To Exercise "Greater Scrutiny" Required For Off-Reservation Transfers.

BIA is required to "give greater scrutiny to the tribe's justification of anticipated benefits from the acquisition" when the land being transferred into trust is off-reservation. 25 C.F.R. § 151.11(b). The Decision fails to reflect the greater scrutiny mandated under the applicable regulations. December 2013 Comment Letter 6-9. As a result, BIA's reasoning and balance of factors suffers a fundamental flaw that requires this Board to vacate the Decision.

REQUESTED RELIEF

For the reasons stated above, Ms. Crawford-Hall requests the following relief:

1. BIA's December 24, 2014 Decision be vacated and reversed because BIA lacks the authority to transfer the Applicant's land into trust and the Applicant failed to satisfy the requirements to transfer land into trust and that BIA's October 17, 2014 FONSI be vacated because it violates NEPA;
2. In the alternative, BIA's December 24, 2014 Decision be vacated and remanded to BIA with instructions to prepare an Environmental Impact Statement at some reasonable period of time before the proposed development because BIA failed to comply with the requirements of NEPA and that BIA's October 17, 2014 FONSI be vacated because it violates NEPA;
3. That the processing of the fee-to-trust acquisition be stayed until the issues in this appeal are resolved.

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4. That the prior appeal filed with Ms. Crawford-Hall challenging the October 17, 2014 FONSI and EA be consolidated with this appeal.

Dated: January 29, 2015

Respectfully submitted,

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Attorneys for Anne (Nancy) Crawford-Hall and related San Lucas Ranch LLC and Holy Cow Performance Horses LCC entities

Exhibit A

United States Department of the Interior

IN REPLY REFER TO:

BUREAU OF INDIAN AFFAIRS
Pacific Regional Office
2800 Cottage Way
Sacramento, California 95825

DEC 2 4 2014

NOTICE OF DECISION

CERTIFIED MAIL-RETURN RECEIPT REQUESTED – 7013 2630 0001 5557 8848

Honorable Vincent P. Armenta
Chairperson, Santa Ynez Band
of Chumash Mission Indians
P.O. Box 517
Santa Ynez, CA 93460

Dear Chairman Armenta:

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

Real property in the unincorporated area of the County of Santa Barbara, State of California, described as follows:

PARCEL 1: (APN: 141-121-51 AND PORTION OF APN: 141-140-10)

LOTS 9 THROUGH 18, INCLUSIVE, OF TRACT 18, IN THE COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, AS SHOWN ON THE MAP SHOWING THE SUBDIVISIONS OF THE CANADA DE LOS PINOS OR COLLEGE RANCHO, FILED IN RACK 3, AS MAP 4 IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

THIS LEGAL IS MADE PURSUANT TO THAT CERTAIN CERTIFICATE OF COMPLIANCE RECORDED DECEMBER 5, 2001 AS INSTRUMENT NO. 01-105580 OF OFFICIAL RECORDS.

PARCEL 2: (PORTION OF APN: 141-140-10)

LOTS 1 THROUGH 12, INCLUSIVE, OF TRACT 24, IN THE COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, AS SHOWN ON THE MAP SHOWING THE SUBDIVISIONS OF THE CANADA DE LOS PINOS OR COLLEGE RANCHO, FILED IN

RACK 3, AS MAP 4 IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

THIS LEGAL IS MADE PURSUANT TO THAT CERTAIN CERTIFICATE OF COMPLIANCE RECORDED DECEMBER 5, 2001 AS INSTRUMENT NO. 01-105581 OF OFFICIAL RECORDS.

PARCEL 3: (PORTIONS OF APNS: 141-230-23 AND 141-140-10)

LOTS 19 AND 20 OF TRACT 18 AND THAT PORTION OF LOTS 1, 2, 7, 8, 9, 10, AND 15 THROUGH 20, INCLUSIVE, OF TRACT 16, IN THE COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, AS SHOWN ON THE MAP SHOWING THE SUBDIVISIONS OF THE CANADA DE LOS PINOS OR COLLEGE RANCHO, FILED IN RACK 3, AS MAP 4 IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, THAT LIES NORTHEASTERLY OF THE NORTHEASTERLY LINE OF THE LAND GRANTED TO THE STATE OF CALIFORNIA BY AN EXECUTOR'S DEED RECORDED APRIL 2, 1968 IN BOOK 2227, PAGE 136 OF OFFICIAL RECORDS OF SAID COUNTY.

THIS LEGAL IS MADE PURSUANT TO THAT CERTAIN CERTIFICATE OF COMPLIANCE RECORDED DECEMBER 5, 2001 AS INSTRUMENT NO. 01-105582 OF OFFICIAL RECORDS.

PARCEL 4: (APN: 141-240-02 AND PORTION OF APN: 141-140-10)

LOTS 1 THROUGH 12, INCLUSIVE, OF TRACT 25, IN THE COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, AS SHOWN ON THE MAP SHOWING THE SUBDIVISIONS OF THE CANADA DE LOS PINOS OR COLLEGE RANCHO, FILED IN RACK 3, AS MAP 4 IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

THIS LEGAL IS MADE PURSUANT TO THAT CERTAIN CERTIFICATE OF COMPLIANCE RECORDED DECEMBER 5, 2001 AS INSTRUMENT NO. 01-105583 OF OFFICIAL RECORDS.

PARCEL 5: (PORTION OF APN: 141-230-23)

THAT PORTION OF LOTS 3 AND 6 OF TRACT 16, IN THE COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, AS SHOWN ON THE MAP SHOWING THE SUBDIVISIONS OF THE CANADA DE LOS PINOS OR COLLEGE RANCHO, FILED IN RACK 3, AS MAP 4 IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, THAT LIES NORTHEASTERLY OF THE NORTHEASTERLY LINE OF THE LAND GRANTED TO THE STATE OF CALIFORNIA BY AN EXECUTOR'S DEED RECORDED APRIL 2, 1968 IN BOOK 2227, PAGE 136 OF OFFICIAL RECORDS OF SAID COUNTY.

THIS LEGAL IS MADE PURSUANT TO THAT CERTAIN CERTIFICATE OF COMPLIANCE RECORDED DECEMBER 5, 2001 AS INSTRUMENT NO. 01-105584 OF OFFICIAL RECORDS.

The subject property encompasses approximately 1427.78 acres, more or less, commonly referred to as Assessor's Parcel Numbers: 141-151-051, 141-140-010, 141-230-023, and 141-240-002.

Note: The total acreage is consistent with the Bureau of Indian Affairs; GIS Cartographer's Legal Description Review dated September 3, 2013.

The Tribe intends to provide tribal housing and supporting infrastructure on a portion of the property. The remainder will continue to be used for economic pursuits (vineyards and a horse boarding stable), as well as for future long range planning and land banking.

Federal Law authorizes the Secretary of the Interior, or his authorized representative, to acquire title on behalf of the United States of America for the benefit of tribes when such acquisition is authorized by an Act of Congress and (1) when such lands are within the consolidation area; or (2) when the tribe already owns an interest in the land; or (3) when the Secretary determines that the land is necessary to facilitate tribal self-determination, economic development, or tribal housing. In this particular instance, the authorizing Act of Congress is the Indian Land Consolidation Act of 1983 (25 U.S.C. § 2202). The applicable regulations are set forth in the Code of Federal Regulations (CFR), Title 25, INDIANS, Part 151, as amended. This land acquisition falls within the land acquisition policy as set forth by the Secretary of the Interior.

The Santa Ynez Reservation was originally established pursuant to Departmental Order under the authority of the Act of January 12, 1891 (26 Stat. 712).

Pursuant to 25 U.S.C. § 478, the Secretary held such an election for the Tribe on December 15, 1934, at which the majority of the Tribe's voters voted to accept the provisions of the Indian Reorganization Act of June 18, 1934[1]. . The Secretary's act of calling and holding this election for the Tribe informs us that the Tribe was deemed to be "under Federal jurisdiction" in 1934. The Haas List tribes are considered to be under federal jurisdiction in 1934.[2]

On September 17, 2013, and again on November 19, 2013 we issued, by certified mail, return receipt requested, notice of and sought comments regarding the proposed fee-to-trust application from the California State Clearinghouse, Office of Planning and Research; Mr. Daniel Powell, Legal Affairs Secretary, Office of the Governor; Sara Drake, Deputy Attorney General, State of California; Office of the Honorable Senator Diane Feinstein; Santa Barbara County Assessor; Santa Barbara County Treasurer and Tax Collector; Santa Barbara County Sheriff's Department; Santa Barbara County Department of Public Works; Santa Barbara County Department of Planning and Development; Chair, Santa Barbara County Board of Supervisors; County Executive Officer, Santa Barbara County; Doreen Far, Third District Supervisor, Santa Barbara County; Kevin Ready, Senior Deputy County Counsel, Santa Barbara County; City of Santa Barbara; Buellton City Hall; City of Solvang; Lois Capps, U.S. House of Representatives; Stand

[1] See "Ten Years of Tribal Government Under I.R.A", United States Services, 1947, at Interior's website at http://www.doi.gov/library/internet/subject/upload/Haas-TenYears.pdf.

[2] See, Shawano County, Wisconsin v. Acting Midwest Regional Director, BIA, 53 IBIA 62 (February 28, 2011) and Stand Up for California, etal, v. U.S. Department of Interior v. North Fork Rancheria of Mono Indians, 919 F. Supp. 2d 51 (January 29, 2013), the District Court for District of Columbia.

Up for California; Santa Ynez Valley Concerned Citizens; Women's Environmental Watch; Santa Ynez Valley Alliance; Santa Ynez Community Service District; Andi Culbertson, Cathy Christian, Attorney at Law, Nielson Merksamer Parrinello Gross & Leoni LLP; Rob Walton; Kathy Cleary; and Superintendent, Southern California Agency.

In response to our notice dated September 17, 2013, we received the following comments:

1. One-thousand sixty-six (1,066) support letters.
2. Letter dated November 7, 2013 from Lois Capps, Member of Congress – received after comment period ended, stating the following:
    - Numerous local issues must be carefully considered and examined by the Bureau of Indian Affairs, including; impacts on future development, the environment, traffic, noise, and public safety; and the Band's historical connections to the Valley, need for housing, and its rights to self-determination and economic development.
3. Letter dated October 31, 2013 from the County of Santa Barbara stating the following:
    - Significant loss of tax revenue;
    - Compatibility with the County's General Plan, Santa Ynez Community Plan, and County land use Regulations;
    - The proposed trust acquisition is "off reservation";
    - There is no need for additional land to be taken into trust;
    - There is a need for an Environmental Impact Statement;
    - The county appealed the approval of the Tribal Consolidation Area (TCA);
4. Letter dated October 30, 2013 from the Ryan A. Smith, Brownstein Hyatt Farber and Schreck stating the following:
    - It is requested that the Bureau take three steps to clarify for all concerned the status of the Tribes pending request for land into trust in accordance with the approval of the Land Consolidation and Acquisition Plan (LCAP);
    - That it be confirmed in writing and announced publicly that, should the Tribe re-submit its TCA Application for approval, the public will be given notice of the submission, and will also be given an opportunity to comment before BIA takes any action on it;
    - Confirm in writing and announce publicly that BIA is ceasing its consideration of the Camp 4 fee-to-trust application and has returned the application to the Tribe; and
    - The EA states that it was prepared on the assumption that, because the Camp 4 lands were within an approved TCA, they were to be "given the same level of scrutiny as land acquisitions on or adjacent to the tribe's reservation," even though the Camp 4 land themselves are all off-reservation lands.

5. Letter received October 23, 2013 from Linda Kastner stating the following:

    - The property is under the Williamson Act which provides lesser property taxes on producing agricultural land;
    - The County should receive $300,000 annually and, if developed, even more funds annually;
    - The Environmental Assessment provided shows a water treatment plant far exceeding the usage of 143 homes planned; and
    - A tribal hall of 80,000 square feet with parking for 400 cars can't even be imagined in a residential, agricultural area. The roads surrounding the area are two lane, narrow roads;

6. Letter dated October 22, 2013 from Susan Jordan, Director, California Coastal Protection Network stating the following:

    - That there were changes to the project since the FTT application was filed;
    - The FTT application is inadequate and the Tribe should present a plan of the anticipated economic benefits; and
    - The requirement of necessity has not been proven.

7. Letter dated October 22, 2013 from M. Andriette Culbertson stating the following:

    - That there were changes to the project since the FTT application was filed;
    - The FTT application is inadequate and the Tribe should present a plan of the anticipated economic benefits; and
    - The requirement of necessity has not been proven.

8. Letter received October 21, 2013 from L.C. Smith stating the following:

    - Concerned about the environmental impact issues;
    - Water issues, both contamination and overuse;
    - It could be a likely location for a bigger gaming operation;
    - Inadequacy of the current roads, impact on traffic and safety;
    - Concerned about the 800 privately owned parcels as well as businesses inside the proposed TCA of which the greater majority by far are non-tribal members; and
    - The lack of consideration for thousands of people who have invested their lives and livelihoods in this location, many for generations, and the thousands more surrounding the TCA seems extremely short sided.

9. Letter dated October 18, 2013 from W.E. Watch, Inc. stating the following:

    - The FTT application was predicated on the TCA. Any further action on the application would consequently require a level of scrutiny for an Off-Reservation FTT application. The application fails to meet the required standard;
    - The presented application fails to meet the "necessity" requirement.

- Property tax loss to Santa Barbara County;
- Impacts on traffic, public safety, noise, etc., were inadequately addressed; and
- The effects of ground water resources and wastewater issues need more in depth scrutiny.

10. Letter dated October 17, 2013 from Santa Ynez Valley Concerned Citizens stating the following:

    - The BIA and the Tribe assert in the EA and FTT application that the Camp 4 parcels are to be processed as an on-reservation acquisition;
    - The Camp 4 parcels may meet an exception under Section 20 of the Indian Gaming Regulatory Act (IGRA) (U.S.C. 2719 (a) (1). This transaction becomes a major federal action and requires an Environmental Impact Statement (EIS);
    - The proposed FTT poses significant jurisdictional conflicts and off-reservation impacts not adequately identified, assessed, or mitigated;
    - The loss of property taxes;
    - The proposed CA does not address necessary mitigations or services paid for at the expense of all County taxpayers;
    - The Tribe has not demonstrated a clearly identified economic need for the FTT. It is absent of showing "immediate need" or "necessity";
    - The Tribe has not demonstrated that trust conveyance is necessary to facilitate tribal self-determination, nor that the need of the land meets the statutory standards of 25 U.S.C. 465;
    - The proposed FTT creates a significant, negative and unnecessary precedent for FTT in California;
    - Once in trust, Tribal Governments may change their development plans for the property negating the value of negotiated mitigations and posing new unmitigated burdens; and
    - The Bureau of Indian Affairs must be equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status.

11. Letter dated October 17, 2013 from Stand Up for California stating the following:

    - The FTT application does not fully address, or adhere to, all the factors in 25 C.F.R. Part 151;
    - This application is inconsistent with the purposes of 25 U.S.C. 465.
    - The Tribal Consolidation Plan (TCA) was approved without notice to affected private owners or affected local governments;
    - The Chumash and the BIA are asserting this is an on-reservation acquisition;
    - The Tribe has not provided a detailed comprehensive economic business plan;
    - A heightened concern that the land use includes gaming;
    - The BIA has ignored the statutory limitations of 25 USC 456 and 25 CFR 151.11;
    - The BIA and the Chumash have ignored the statutory limitations of the California Land Commissions Act of 1851;

- The application is absent of showing "immediate need" or "necessity";
- The Tribe has not stated a clear economic benefit;
- The taking of this land into trust creates many negative impacts on the existing social-cultural, political, and economic systems of the regional area;
- The application, like the EA, fails to disclose the total purpose for which the land will be used;
- The reduction of tax revenue for the Santa Ynez community;
- The Bureau of Indian Affairs must be equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status; and
- Environmental concerns.

12. Letter received October 16, 2013 from Charlotte Lindsay stating that there is no objection to the tribe of Chumash building on their own land if they play by the same rules as the rest of the community.

13. Letter dated October 16, 2013 from A. Barry Cappello, Cappello & Noel, LLP stating the following:

    - Consideration of the FTT application should be stayed pending final determination of the appeals of the Regional Director's TCA approval;
    - There is no question that this property is outside of and not contiguous to the reservation, which requires both 151.10 and the additional factors in 151.11;
    - The Bureau must give greater scrutiny to the purported justifications and potential regulatory conflicts and impacts in an off-reservation acquisition;
    - Whether the TCA was properly approved is the subject of numerous appeals, if it is reversed, the application should be deemed inadequate;
    - There is unexplained long range need;
    - To the extent that the applicant claims a need for additional tribal housing, there is insufficient information on the actual extent or immediacy of that need;
    - The FTT application cannot be considered before a preparation of a full environmental impact statement;

14. Letter dated October 15, 2013 from Kathy Cleary, Preservation of Los Olivos P.O.L.O. Board President stating the following:

    - The Preservation of Los Olivos opposes the FTT application;
    - Several documents are listed that include reasons for opposition, which include litigation on other Santa Ynez applications and the nine appeals on the TCA, comments that were provided on other applications and on the Environmental assessment, and the Santa Ynez Community Plan;
    - The TCA states as its purpose the intent to facilitate future land into federal trust and provides framework for less stringent standards for FTT, and that the TCA could be expanded;
    - The Santa Ynez Band is not entitled to additional land into federal trust;

- The Santa Ynez Band is claiming 1,300 lineal descendants for expansion of their land base; and
- Stated several comments that were made specifically on the Environmental Assessment.

15. Letter dated October 10, 2013 from Santa Ynez Rancho Estates Mutual Water Company, Inc. stating the following:

    - The process used to consider annexation of Camp 4 is based upon a materially false premise: that the TCA has been lawfully approved which includes the subject property;
    - The entire process in this case has been abusive to the public interest;
    - Public records indicate that the BIA has taken three-quarters of a million dollars directly from the Chumash tribe to support their FTT applications;
    - The application fails to demonstrate the required "necessity" for housing;
    - The Chumash claim to "aboriginal lands" is not supported by history or law;
    - The Assertion of need for "land banking" is not supported by law:
    - Neither the County of Santa Barbara nor the State of California can afford the removal of this land from the tax rolls or the jurisdictional conflicts which will certainly arise. These impacts have not been adequately analyzed as required by law; and
    - The cumulative impact on precedent on the State of California must be considered and denied by this reason.

16. Letter dated October 2, 2013 from Peter and Francine Feldmann expressing their grave concern regarding the TT application for property known as Camp 4.

17. Letter dated September 23, 2013 from John and Cynthia Sanger stating the following:

    - Under the provisions of the TCA those who live within the designated 11,500 acres are given no assurance that our surrounding lands and water sources will not be deeply impacted by uncontrolled commercial and residential development; and
    - Objection to the granting of annexation and the TCA plan for the Santa Ynez Valley.

On June 17, 2013, the Bureau of Indian Affairs approved a Land Consolidation Plan for the Santa Ynez Band of Chumash Indians in accordance with 25 CFR § 151.2(h) and § 151.3(a)(1). Although the Plan was in accordance with the Regulations the Tribe agreed to voluntarily withdraw the Plan as a result of concerns from the local community.

In response to our notice dated November 19, 2013, we received the following comments:

1. Letter dated December 28, 2013 from A. Barry Cappello, Cappello & Noel, LLP stating the following:

- The Tribe has not demonstrated that the BIA has the authority to approve the Tribe's application;
- The Tribe was not a "recognized Indian tribe" when the IRA became law on June 18, 1934;
- The Tribe was not "now under Federal jurisdiction" when the IRA became law;
- The Tribe's alleged need and justification for the acquisition is insufficient under the standard of "greater scrutiny" required under 25 C.F.R. § 151.11;
- The revised FTT application must be denied because it inaccurately describes the impacts on relevant political subdivisions, which must be given greater scrutiny and greater weight;
- The revised application continues to rely on an inadequate Environmental Assessment; compliance with NEPA requires an Environmental Impact Statement;
- The revised application does not contain a required business plan;

2. Email dated December 28, 2013 from Bill Krauch states the following:

    - The amended application does not remove the "TCA"/"TCLA" from the basis of the application. The Environmental Assessment relies on the TCA as a basis for the Assessment. If the "TCA" has been removed, then the EA must be completed again;
    - The application being considered an "On-Reservation" request when actually it is "Off-Reservation" and subject to other requirements.

3. Letter dated December 20, 2013 from Rex and Patricia Murphy states the Chumash no longer have any need for more land.

4. Letter dated December 19, 2013 from Santa Ynez Community Service District states that the four items listed in the notice do not affect their district as the Camp 4 property is outside of the Santa Ynez Community Services District's boundaries.

5. Letter dated December 18, 2013 from M. Andriette Culbertson reiterates her comments listed above dated October 22, 2013 and comments on the Environmental Assessment dated September 27, 2013.:

6. Letter dated December 18, 2013 from Santa Ynez Valley Concerned Citizens states that they want to include the following additions to their comments listed above in their letter dated October 17, 2013, along with comments submitted on the Environmental Assessment dated October 4, 2013:

    - Demand that a more rigorous Environmental Impact Survey (EIS) be undertaken before consideration of this application proceeds any further;
    - The Chumash FTT application does not fully address, or adhere to, all the factors in 25 C.F.R. Part 151;

- SYVCC asserts that the BIA has ignored the statutory limitations of 25 USC 465 and 25 CFR 151.11;
- With the vacating of the Tribal Consolidation area, the current application must now be treated as an Off-Reservation acquisition. The re-submitted application and the Environmental Assessment fail to comport with (a) 25 CFR 151.11;
- The current application for trust acquisition fails to provide sufficient scrutiny as to the purposes and needs of the acquisition demanded for an Off-Reservation acquisition; and
- SYVCC is highly skeptical in terms of Land Banking as it appears to underestimate the impact of potential intensive commercial development;
- The Santa Ynez Band has not made any compelling argument to justify the need for this trust acquisition.

7. Letter dated December 17, 2013 from Caryn Cantella requests that great weight be given to the following:

    - The environmental impacts which have not been fully disclosed;
    - The likely traffic and related "event pollution";
    - The unfunded tax burdens that will fall to non-tribal members of the County if Camp 4 is transferred into trust; and
    - The financially sound status of the Chumash, presently and for generations to come.

8. Letter dated December 17, 2013 from Kelly Patricia Burke stating any opposition of any fee-to-trust approval given to the Chumash Band of Mission Indians.

9. Letter dated December 17, 2013 from Sean Wilczak stating any opposition of any fee-to-trust approval given to the Chumash Band of Mission Indians.

10. Letter dated December 17, 2013 from Ryan Williams stating any opposition of any fee-to-trust approval given to the Chumash Band of Mission Indians.

11. Letter dated December 17, 2013 from Erica Williams stating any opposition of any fee-to-trust approval given to the Chumash Band of Mission Indians.

12. Letter dated December 16, 2013 from Santa Ynez Rancho Mutual Water Company, Inc. states the following:

    - The Santa Ynez Rancho Mutual Water Company, Inc. referenced several letters that they would adopt and incorporate and they include: comment letter dated October 4, 2013 on the EA and October 10, 2013 on the Fee-to-Trust application; comment letter dated October 7, 2013 from the County of Santa Barbara on the EA; and comment letter dated October 31, 2013 on the Fee-to-Trust application, legal arguments made in a letter from Governor Schwartzenegger's Legal Affairs Secretary Peter Siggins to Mr. James Fletcher of the BIA dated August 26, 2005;

- Until and unless all references to the Land Consolidation and acquisition Plan have been removed from the application and the associated environmental documents, there should be no action taken on this Fee-to-Trust application;
- An EA is inadequate – NEPA requires a full EIS;
- There has not been any demonstration of any "immediate need" or "necessity" for Indian housing. Tribal members are making $1 million dollars per year each, which is far more than is necessary to obtain housing;
- Approval of this application would violate the purpose and intent of the 1934 Indian Reorganization Act, which sought to help tribes reach self-sufficiency;
- The Tribe does not have a political entitlement to the requested territory;
- Jurisdictional conflicts are massive, wide ranging, and unresolvable;
- The economic impacts of the unfunded demand for government services are massive and unsupportable to the County of Santa Barbara and its residents; and
- The cumulative impacts of this decision on the county and the state have not been analyzed or considered;

13. Letter dated December 16, 2013 from Kathy Cleary, Board President, P.O.L.O., submits supplements to original comments dated December 4, 2013:

    - They bring attention to the Supreme Court Decision Carcieri, Governor of Rhode Island v. Salazar, Secretary of the Interior which stated, National Congress of American Indians (NCAI) argues that the "ILCA independently grants authority under Section 465 for the Secretary to execute the challenged trust acquisition." P.O.L.O. does not agree; and
    - ILCA is the basis for the Santa Ynez Band's Tribal Land Consolidation and Acquisition Plan claiming entitlement to 11,500 acres.

14. Letter received December 16, 2013 from Linda Kastner mentions some general questions in regards to the use, including: whether there is a business plan, what the building and parking spaces will be used for, how the land is supposed to provide housing for some 1,000 descendants, and the maintenance of the roads to be used outside of, but imperative to, this FTT land.

15. Letter dated December 16, 2013 from Gerry B. Shepherd stating their family holds an easement referred to in Schedule B of the title commitment and requests that all valid existing easement rights be retained by the affected party should any FTT application be approved.

16. Letter dated December 15, 2013 from Klaus M. Brown states the following:

    - Oppose the amended/revised FTT application for the same reasons stated in the seven page comment letter on the Environmental Assessment;
    - Oppose this application being considered as "On-Reservation," and states that it does not remove the "TCA/"TLCA" from the basis of the amended application;
    - The EA relies on the "TCA" as a basis of the amended application. The EA must be completed again if the "TCA" has been removed;

- A FTT application for Camp 4 must be submitted under Section 151.11, "Off-Reservation acquisitions," thus subject to the requirement to prepare and disclose a business plan for reasonable foreseeable development;
- Requirements per 25 CFR 151.11(d) call for the inclusion of comments and input from State and local governments regarding regulatory jurisdiction, real property taxes, and special assessments. State and local government comments are not included in the amended application and the local tax impacts are vastly understated; and
- The Indian Reorganization Act of 1934 was premised on a finding of economic necessity for impoverished tribes. Based on the success of the gaming casino and other development investments, the Chumash Tribe has become very wealthy in a short period of time.

17. Letter dated December 9, 2013 from Cheryl Schmit, Director, Stand Up for California states the following:

    Please note that some comments were listed in a letter dated October 17, 2013, above, and are not restated.

    - The EA is inconsistent with the re-submitted application and must be corrected and re-circulated, preferably as a full Environmental Impact Statement (EIS);
    - The Chumash were not affected by the Dawes Act. The Chumash Reservation was not created until December of 1901, well after the impacts of the Dawes Act.
    - An Off-Reservation acquisition requires the Secretary to evaluate additional criteria when the request for land is located outside the reservation or is non-contiguous, give greater scrutiny to the Tribe's justification of anticipated benefits, and greater weight to the concerns raised by local government;
    - The Tribe shall provide a plan which specifies the anticipated economic benefits associated with the proposed use;
    - The FTT application states and restates, the intent is to eliminate the jurisdictional authority of the County of Santa Barbara and the State of California, raises a red flag;
    - The Tribe states that the majority of the land will be "banked" for future use, but the Tribe does not explain what the future use may consist of;
    - There are stated concerns about jurisdictional issues and that these issues remain until there is a comprehensive mutually beneficial agreement that fully addresses the concerns of the County of Santa Barbara and the Santa Ynez Valley residents; and
    - NEPA concerns.

18. Letter dated December 6, 2013 from Kelly B. Gray, Esq. states the following:

    - Chumash must submit an Environmental Impact Statement (EIS);
    - The Chumash must disclose specifics regarding intended use of Camp 4;

- The tax impacts of a "Fee-to-Trust" transfer of Camp 4 are grossly misrepresented; and
- The Indian Reorganization Act of 1934 was premised upon finding economic necessity. The Chumash tribal members each receive financial tribal distributions and benefits valued at $1 million per year. Therefore, the Chumash cannot qualify for any finding of economic necessity.

19. Letter dated December 4, 2013 from Kathy Cleary, Board President, Preservation of Los Olivos (P.O.L.O).

- P.O.L.O. opposes the amended/revised application for the same reasons listed in their letter dated October 15, 2013, noted above;
- The amended application does not remove the "TCA"/"TLCA" from the basis of the application;
- The Environmental Assessment (EA) relies on the "TCA" as a basis of the Assessment. If the TCA has been removed, the EA must be completed again;
- P.O.L.O. objects to this application being considered as "On-Reservation";
- There is no business plan;
- State and local government comments were not submitted with the initial applications and are not included in the amended application;
- P.O.L.O. also objects to the reference and reliance on the "Solicitor's Opinion;
- Questions regarding the housing description by the tribal government; and
- P.O.L.O. rejects the Santa Ynez Band's claim that once the land is in trust, it will no longer be under state and local jurisdiction.

By letter dated May 16, 2014, the Santa Ynez Band's responses for each of the concerns listed above are:

§151.10(a) – The existence of statutory authority for the acquisition and any limitations contained in such authority.

Some commenters insisted that the BIA does not have authority to take land into trust for the Tribe because of the Carcieri v. Salazar, 555 U.S. 379 (2009) ruling by the Supreme Court. The Tribe's application, however, points out that the Department of Interior has already determined that the Tribe was "under Federal Jurisdiction in 1934."[3] Further, the Tribe participated in IRA elections and voted to accept coming under the provisions of the IRA, which the IBIA has held to be dispositive of the fact, and thus the statutory authority for this acquisition is Section 5 of the IRA.[4]

§151.10(b) and (c) – The need of the individual Indian or tribe for additional land; the purposes for which the land will be used.

[3] See Solicitor's Opinion dated May 23, 2012.
[4] Village of Hobart v. Acting Midwest Regional Director 57 IBIA 4 (2013).

Many commenters conflated these two criteria and thus the Tribe responds to the comments to these in one response. The policies set forth in §151.3 are subsumed in the criteria for need and purpose of the acquisition. Thus, it is permissible for the BIA to consider both whether the Tribe already owns an interest in the land and whether the acquisition is necessary to facilitate tribal self-determination, economic development, or Indian housing. As is clear throughout the application, the Tribe's primary goal for the acquisition is housing, but self-determination and economic development also support the need and purpose of the acquisition. Further, neither the statute nor any portion of the regulations talk about "imminent" need as some commenters claim is necessary. While that is not a criterion which the BIA need consider, the Tribe's need for additional lands for housing could certainly be considered "imminent" as 83% of its population is not currently residing on tribal lands.

Many commenters indicated that they felt that the Tribe either did not need all 1400 acres for housing, or were skeptical that the twenty-six acres suitable for residential development on the current Reservation were insufficient for the additional housing. As noted in the application and the Final EA, much of the Tribe's Reservation is highly constrained, which results in limitations in use of all acreage on the Reservation. Further, the majority of the 26 acres of residential capacity on the Reservation is already developed with housing and thus would not be available for development of additional housing for tribal members. The Tribe has a population of 136 members and approximately 1300 lineal descendants with only 17% of their numbers having housing on tribal lands (Final EA Section 1.3). This leaves a need for housing for over 80% of the Tribe's population. Thus there is a need for additional land to provide for continued population growth in the Tribe. Moreover, the Department has recently reaffirmed the need for tribal homelands:

> The acquisition of land in trust is one of the most significant functions that this Department undertakes on behalf of Indian tribes. Placing land into trust secures tribal homelands, which in turn advances economic development, promotes the health and welfare of tribal communities, and helps to protect tribal culture and traditional ways of life.[5]

Some comments assert that the land could be developed in fee or that the Tribe does not need to have the land in trust for its objectives. It has long been held by the IBIA and courts that it is unreasonable to require the Secretary to specify why holding the land in trust is more beneficial for tribes[6]. Or, in other words, "the inquiry is whether the Tribe needs the land, not whether it needs the land to be in trust.[7]"

[5] 79 Fed. Reg. 24648.
[6] See, e.g., Yreka v. Salazar 2011 WL 2433660 (2011).
[7] Thurston County v. Great Plans Regional Director 56 IBIA 296 (2013).

Commenters also raised the issue of the Tribe's current economic status. Many commenters have equated economic need with need for additional lands in trust. However, the IBIA and courts have long held that a tribe need not be suffering financially to need more land in trust. Id. The status of a tribe's economic well-being is not determinative of being able to further the policies of self-determination, self-government and self-sufficiency. Id. Therefore, the Regional Director need not consider the Tribe's economic success in determining whether it has a need for additional land. "The Tribe's financial security or economic success simply is not a relevant consideration."[8]

There were also comments stating that the Tribe did not disclose its purposes for the acquisition; the acquisition would not meet the purposes of the IRA; and that the desire to take land for an unspecified purpose (or "land-banking") was either not recognized in the regulations or did not justify the Tribe's need for additional land. The Tribe's purpose for the acquisition has been specified both in its application and in the Final EA (Final EA Section 1.3). In addition, in a January 21, 2013 community meeting, the Tribe laid out multiple proposed housing plans for the project. These multiple plans were eventually reduced to two alternatives and a no action plan. As the Tribe has repeatedly noted over several years, the primary purpose is to develop housing for its tribal members and lineal descendants. Moreover, the Courts have held that the purposes of the IRA do not restrict the Secretary to acquiring lands only for landless tribes or tribes which have lost land through allotment to reacquire tribal lands[9]. While the regulations do not specifically identify or define "land-banking" the statute and regulations clearly contemplate taking land into trust for future uses. Furthering long-term stability of a tribe has been held to qualify as a sufficient need[10].

Finally, there were comments that the Regional Director should consider that the land might be used for gaming or that the proposed use of the land might change once the land is placed into trust. The commenters, however, failed to cite any specific examples in which the Tribe has placed land into trust for one purpose and thereafter radically changed the use. This is because there were no such incidences to cite. The Tribe further addressed the gaming aspect in its Application and the Final EA,[11] stating that no gaming will occur on these lands. As most commenters now know, the Tribe would not be able to do any gaming on the property until it has completed the Section 20 approval process under IGRA. Since the Tribe does not intend to do gaming on the property, it has not submitted any such application. Therefore, Secretary relies on the Tribe's assurances

[8] Benewah County v. Northwest Regional Director 55 IBIA 281 (2012).
[9] See, e.g., City of Tacoma v. Andrus 457 F.Supp. 342 (1978).
[10] See, e.g., Sauk County v. Department of Interior 2008 WL 2225680 (2008).
[11] Final EA Section 2.2.3.

regarding the proposed use and is not required to speculate about possible or potential uses[12].

§151.10(e) – The impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls.

The County speculated that it could lose as much as $311 million in tax revenues over fifty years assuming the highest development of the property. Many other commenters cited the County comments to assert the same. It is clear, however, that the regulations do not require the BIA to consider a hypothetical "cumulative analysis" of removal of the land from the tax rolls[13]. Moreover, the County fails to note that even at $311 million over fifty years, the amount is still less than 1% of the expected revenues of the County for that period. Instead, the tax loss must be considered in relation to the revenue baseline at the time of the acquisition[14]. Further, while many commenters, including the County, noted that they felt that the availability of services would be limited due to the reduction in tax revenues, not one commenter provided any specific services which would be cut or unavailable due to the loss of these tax revenues. Therefore, none of the commenters provided the BIA with any specific information regarding tax loss to consider, other than a speculative total loss over a period of years. This is not sufficient to show that the loss will have anything other than a minimal impact on the County[15].

Some commenters did acknowledge that the Tribe made attempts to come to an agreement with the County to try to make up some of the shortfall; however the County rejected all such attempts. Moreover, some commenters actually asserted that the Tribe was the largest employer in the County, but failed to acknowledge the benefits to the community that such employment brings, including income taxes, sales tax and potentially property taxes from employees of the Tribe[16]. As is more thoroughly detailed in the Final EA[17] and its responses to comments,[18] the Tribe has provided funding for law enforcement and fire services through agreements, grants and SDF funds, and has been one of the largest donors to schools and other community organizations in the County. These grants, payments, and donations more than offset any loss of tax revenues which might occur with land being placed into trust. Finally, many tribal members continue to pay for off-reservation fee-based services such as water, sewer and medical assistance.

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[12] See, e.g., Yreka v. Salazar, infra.
[13] County of Charles Mix v. USDOI 2011 WL 1303125 (2011).
[14] Thurston County, infra.
[15] Benewah County, infra.
[16] See, e.g., Benewah County, infra.
[17] Final EA Sections 3.9 and 4.1.9
[18] Final EA Appendix O

§151.10(f) – Jurisdictional problems and potential conflicts of land use which may arise.

Many commenters made blanket statements that the proposed development of 143 homes on the 1400 acres would be incompatible with the County General Plan, Santa Ynez Community Plan, and County land use regulations. These commenters failed to provide any specific details regarding how the proposed development would be incompatible and therefore failed to provide the BIA with information to further consider this potential conflict of land use. The County and many other commenters also promoted a seemingly contradictory idea to that of the incompatibility; i.e., that the Tribe could develop its project if the land remained in fee. The implication is that while there may be some potential conflicts between what the Tribe proposes to develop and the County land use rules, there is also a way to allow the development to continue under the County's jurisdiction. Therefore the alleged conflicts must not be that great or insurmountable. The mere fact that the lands would be trust lands, and therefore not under the County's jurisdiction, is not sufficient in itself to find any adverse impacts[19]. Many commenters also expressed a blanket opposition to any lands being placed into trust for the Tribe because it would then no longer be subject to State or local jurisdiction. Again, this is insufficient evidence to thwart the acquisition of the lands.

§151.11 – Where the land is outside of and noncontiguous to the tribe's reservation, the Secretary must consider additional requirements.

Much is made of the fact that many people understood the BIA to be considering the Tribe's application as "on-reservation" lands, however both NOAs issued by the BIA clearly identified that it would evaluate the application by the criteria in 151.10 and 151.11. Much of this confusion came from a clear misunderstanding of the TCA which had been approved for the Tribe. The TCA in no way obligated the BIA to automatically approve any requests from the Tribe for acquisition of lands within that area, despite the fervor it caused. Nevertheless, in an effort to alleviate the concern, the Tribe withdrew the Plan. Many initial comment letters raised the concern of the TCA, and some even appealed the approval to the IBIA. Because the Tribe withdrew the TCA and amended its application to exclude any reference, that issue is no longer valid. Moreover, the IBIA too found that the issue was moot and dismissed all appeals[20]. It did not, however, as some commenters mistakenly asserted, find that the TCA was improper or illegal. Id.

For an off-reservation acquisition, as the distance between the Tribe's reservation and the land to be acquired increases, the BIA shall give greater scrutiny to the Tribe's anticipated benefits and provide greater weight to state and local government concerns regarding the tax rolls and jurisdictional issues. The proposed acquisition is less than two miles from the reservation boundaries, hardly a distance that will require much scrutiny given that

[19] Thurston County, infra.
[20] County of Santa Barbara v. Pacific Regional Director, 58 IBIA 57 (2013).

many commenters claim to have tens of thousands of acres of land in their ownership. The distance between the current reservation and the acquisition lands is far less in distance than a simple walk across the thousands of acres owned by the commenters. Moreover, acquisitions of land fifteen miles or less from reservation boundaries have been routinely accepted by the BIA and upheld by the IBIA and courts[21]. Therefore, so long as the BIA gives adequate weight to the County's concerns, it is not required to deny the application.

Some commenters argued that there was no business plan submitted as required by §151.11(c). The specific language of the regulations says "where land is being acquired for business purposes, the tribe shall provide a plan which specifies the anticipated economic benefits associated with the proposed use." There is no specific form in which the "plan" must be submitted. As discussed earlier, the Tribe presented a PowerPoint presentation to the community in January of 2013. That PowerPoint, which presented diagrams and descriptions of the proposed project, provides substantial information on the Tribe's plans. Further, as the application points out, the discussion of the on-going business operations (the already operational vineyards and the stables) on the property and any potential future development of the vineyards have been thoroughly discussed in both the EA and revised in the Final EA. For instance, the Final EA (Section 2.1.1) notes that for Alternatives A and B the size of the vineyard would be reduced by fifty acres. It should also be noted that the banquet/exhibition hall has also been removed from the proposal under Alternative B. The Final EA also contains detailed discussion of the current on-going operations and their effect or non-effect on the environment, which necessarily entails management of the vineyard and stables. Thus the information contained in the documents should suffice as a plan. The Tribe has noted that both operations are on-going operations on the fee lands and therefore there are no new economic benefits associated with the acquisition. In addition, as the Tribe has repeatedly stated, the primary purpose of acquiring the land is not for economic purposes, but for tribal housing.

While 25 C.F.R. §151.10(h) addresses "the extent to which the applicant has provided information that allows the Secretary to comply with ...NEPA," that is a separate process in which the Tribe has responded to comments on its EA (Final EA Appendix O). Whether an EIS is necessary, or any other specific environmental issues which have already been thoroughly addressed in the Tribe's Final EA and the responses to comments therein (Final EA Appendix O). Thus, the Final EA and its appendices are incorporated by reference herein as though fully set forth.

[21] See, e.g. Christine A. May v. Acting Phoenix Area Director 33 IBIA 125 (1999) and Yreka v. Salazar, infra.

In addition, five (5) opposition letters were received prior to Notice of Application dated September 17, 2013.

Pursuant to 25 CFR 151.10 & 151.11, the following factors were considered in formulating our decision: (1) the need of the tribe for additional land; (2) the purposes for which the land will be used; (3) impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls; (4) jurisdictional problems and potential conflicts of land use which may arise; (5) whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the acquisition of land in trust status; (6) the extent to which the applicant has provided information that allows the Secretary to comply with 516 DM 6, appendix 4, National Environmental Policy Act Revised Implementing Procedures, and 602 DM 2, Land Acquisitions; Hazardous Substances Determinations; (7) The location of the land relative to state boundaries and its distance from the boundaries of the tribe's reservation; (8) where land is being acquired for business purposes, the tribe shall provide a plan which specifies the anticipated economic benefits associated with the proposed use. Accordingly, the following analysis of the application is provided.

Factor 1 - Need for Additional Land

Certain portions of the Tribe's land tenure history are of particular import to this acquisition and therefore bear repeating here. Specifically, the 1897 Quiet Title Action by the Catholic Church ultimately led to the establishment of the Tribe's reservation.

In 1891, Congress passed the Mission Indian Relief Act designed to help those Indians (neophytes/Christianized Indians) who had been associated with and enslaved by the missions. Many of these communities were destitute, since their land had been taken away from them. It was the intent of Congress to send out a commission to investigate the conditions of the Mission Indians and thereafter settle them onto reservations created by the United States, rather than the current lands held by the Catholic Church/Missions. Thus, the Smiley Commission was formed and investigated the plight of the Mission Indians in California.

The Smiley Commission found that the Santa Ynez Indians were primarily living in a village around the Zanja de Cota Creek area on lands they had moved to around 1835 after the secularization of the Mission. It further determined that, although there was abundant evidence of a long period of occupancy of the mission lands, title to the land for a federal reservation could not be obtained through adverse possession. It is clear from the petition by the Bishop of Monterey that the Church and its priests had long considered the mission lands to be "owned" by the Chumash Indians of that mission (Santa Ines). As such, the Indians could not be considered to have been in adverse possession of the land. The Smiley Commission determined that the United States would have to utilize a different mechanism for establishing a federal reservation for the Santa Ynez Chumash.

In order to accomplish this end, the Bishop of Monterey commenced a quiet title action, which was consented to by the United States Government through its local Indian agent. The action concerned about 11,500 acres of the Rancho Canada de los Pinos (College Rancho) grant.

Throughout the pendency of the litigation, the Santa Ynez Chumash continued to assert their right of occupancy and possession to a much greater area of land than was being discussed in negotiations. At various times parcels of land of five acres, fourteen acres, and two hundred acres were proposed as the property to be deeded to the United States for the Santa Ynez Indians. Each of these proposals represented areas which were significantly less than the original Mission lands (held for the local Chumash by the Catholic Church) and the Rancho Canada de los Pinos (the Mission lands as reconfigured by the United States). Ultimately, after settlement of the lawsuit and negotiations, what was transferred to the United States to be held in trust for the Tribe was a mere ninety-nine acres.

The Santa Ynez Band of Chumash Mission Indians is a strong functioning tribal government with many capabilities and a growing economy. These are some of the tools necessary to sustain future generations, increase the Tribal enrollment, and build an ever-stronger functioning Tribe in the future. Another critical element is land as a basic resource. The Santa Ynez Tribal Government, and the life of its members, relies on the highest and best use of its land resources to provide for government infrastructure, housing, service facilities and to generate income and opportunities that contribute to Tribal self-sufficiency. While the Tribe has managed to move ahead on its existing land base, it recognizes the need to acquire more useable land for the Reservation to both develop a portion for housing, as well as land-bank and hold for development by future generations. The proposed action of transferring the land into trust for the benefit of the Tribe will meet the following needs:

1. Provide ample land space to provide for tribal housing for all tribal members and their families.
2. Bring land within the jurisdictional control of the Tribe, meeting the need for consistent planning, regulatory, and development practices under the single jurisdiction of the Tribe.
3. Help meet the Tribal long range needs to establish a greater reservation land base to meet its needs by increasing the reservation by approximately 1400 acres.
4. Help meet the need for a land base for future generations, land-banking, etc.
5. Help to increase the Tribe's ability to exercise self-determination and to expand Tribal government.
6. Help meet the need to preserve cultural resources in the area by returning land to Tribal and DOI control in order to protect Tribal land from dumping, environmental hazards, unauthorized trespass, or jurisdictional conflict.

The current Reservation lands are highly constrained due to a variety of physical, social, and economic factors. A majority of the lands held in Trust for Santa Ynez are located in a flood plain. This land is not suitable for much, if any, development because of flooding and drainage problems. The irregular topography and flood hazards are associated with the multiple creek corridors which run throughout the property resulting in severe limitations of efficient land utilization. The current reservation has a residential capability of approximately 26 acres, or 18%, and an economic development capability of approximately 16 acres, or 11%. The remaining 99 acres, or 71%, of the reservation is creek corridor and sloped areas, which are difficult to impossible to develop. Therefore, the size of the usable portion of the Santa Ynez Reservation amounts to approximately 50 acres, much of which has already been developed.

The Tribe has a population of 136 tribal members and approximately 1300 lineal descendants which it must provide for. Currently, only about 17% of the tribal members and lineal descendants have housing on tribal lands. This trust land acquisition is an integral part of the Tribe's efforts to bring tribal members and lineal descendants back to the Tribe, accommodate future generations, and create a meaningful opportunity for those tribal members and lineal descendants to be a part of a tribal community revitalization effort that rebuilds tribal culture, customs and traditions. In order to meet these goals, the Tribe needs additional trust land to provide housing for tribal members and lineal descendants who currently are not afforded tribal housing.

Undeveloped property is at a minimum within the Santa Ynez Reservation. Lands that are undeveloped are of insufficient size for development. The northern portion of the reservation has the Tribal Health Clinic and Tribal Government facilities, and the remainder of the land utilization is specifically designed to provide residential opportunities for tribal members and lineal descendants. Any further development in the area would be appropriate only for small scale residential enhancements and does not provide sufficient acreage to build the necessary new housing for its members and lineal descendants.

The remaining acreage held in Trust for the Tribe constitutes the southern Reservation. This is a long, narrow parcel of land which at times narrows to only a couple of hundred feet in width. Such narrowness imposes severe constraints on development of the property. Given the limited usable land the Tribe has to work with, it is in need of additional lands for purposes of tribal housing, enhancing its self-determination, beautification of the Reservation and surrounding properties, and protection and preservation of invaluable cultural resources.

Further, placing the property into trust allows the Tribe to exercise its self-determination and sovereignty over the property. Land is often considered to be the single most important economic resource of an Indian tribe. Once the lands are placed under the jurisdiction of the Federal and tribal governments, the tribal right to govern the lands becomes predominant. This is important, as the inherent right to govern its own lands is one of the most essential powers of any tribal government. As with any government, the Tribe must be able to determine its own course in addressing the needs of its government and its members. Trust status for its lands is crucial to this ability.

Specifically, the Tribe must be able to manage and develop its property pursuant to its own interests and goals. If the land were to remain in fee status, tribal decisions concerning the use of the land would be subject to the authority of the State of California and the County of Santa Barbara, impairing the Tribe's ability to adopt and execute its own land use decisions and development goals. Thus, in order to ensure the effective exercise of tribal sovereignty and development prerogatives with respect to the land, trust status is essential.

It is our determination that the Santa Ynez Band has established a need for additional lands to protect the environment and preserve the reservation.

Factor 2 - Proposed Land Use

The Tribe intends to provide tribal housing and supporting infrastructure on a portion of the property. The remainder will continue to be used for economic pursuits (vineyards and a horse boarding stable), as well as for future long range planning and land banking. The property will serve to enhance the Tribe's land base and support tribal housing, infrastructure, and tribal self-determination. Tribal lands also comprise the heart of the non-economic resources of the tribe by serving cultural, spiritual, and educational purposes, among others.

Factor 3 – Impact on State and Local Government's Tax Base

Santa Barbara County would experience a de minimis decrease in the amount of assessable taxes in the County by placing the property into trust and removing it from the County tax rolls. Parcels accepted into federal trust status are exempt from taxation and would be removed from the County's taxing jurisdiction. In the 2012-2013 tax years, the total taxes assessed on the subject parcels were as follows:

141-121-051	$40,401.06
141-140-010	$41,753.30
141-230-023	$595.96
144-240-002	$504.88

The total collectable taxes on the property for 2012-2013 were $83,255.20, which represents far less than 1% of the total which the County expects to generate from property taxes. Therefore, the percentage of tax revenue that will be lost by transferring the land into trust would be insignificant in comparison to the total amount.

It is our determination that no significant impact will result from the removal of this property from the county tax rolls given the relatively small amount of tax revenue assessed on the subject parcel and the financial contributions provided to the local community by the Tribe through employment and purchases of goods and services.

Factor 4 - Jurisdictional Problems and Potential Conflicts of Land Use Which May Arise

Santa Barbara County has current jurisdiction over the land use on the property subject to this application. The County's land use regulations are presently the applicable regulations when identifying potential future land use conflicts. The property is currently zoned AG – II for agricultural uses, with a minimum lot area of 100 acres on prime and non-prime agricultural lands located within the County.

The Tribe does not anticipate that any significant jurisdictional conflicts will occur as a result of transfer of the subject property into trust. The Tribe's intended purposes of tribal housing, land consolidation, and land banking are not inconsistent with the surrounding uses. As such, the County will not have any additional impacts of trying to coordinate incompatible uses. Further, the County would not have the burden of responsibility of maintaining jurisdiction over the Tribal property.

The land presently is subject to the full civil/regulatory and criminal/prohibitory jurisdiction of the State of California and San Diego County. Once the land is accepted into trust and becomes part of the Reservation, the State of California will have the same territorial and adjudicatory jurisdiction over the land, persons, and transactions on the land as the State has over other Indian counties within the State. Under 18 U.S.C. § 1162 and 28 U.S.C. § 1360 (P.L. 83-280), except as otherwise expressly provided in those statutes, the State of California would retain jurisdiction to enforce its criminal/prohibitory law against all persons and conduct occurring on the land.

With respect to impacts to the State and County, the Tribe has consistently been cooperative with local government and service providers to assist in mitigating any adverse effects their activities may cause. For instance, in 2002 the Tribe established an agreement with the Santa Barbara County Fire Department which pays for fire protection; the Tribe also has its own Wild Lands Fire Department. The Tribe has also been able to make generous contributions to the surrounding communities. They have sponsored numerous organizations and events, including youth programs, sports programs, and local emergency service providers such as the Sheriff's Department and Fire Department. For instance, the Tribe also pays for County Sheriff and Fire through the Special Distribution Fund created by the Tribal-State Compact and has donated over $4.5 million to the Sheriff's Department over a 10 year period. Moreover, the Tribe has nearly completed negotiations for a supplemental agreement to fund a full-time position on the Reservation through the Sheriff's Department. Thus the Tribe has made every effort to help mitigate any impacts to County service organizations and hopes to continue to support such community activities and services in the future.

Factor 5 - Whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status

Acceptance of the acquired land into Federal trust status should not impose any additional responsibilities or burdens on the BIA beyond those already inherent in the Federal trusteeship over the existing Santa Ynez Reservation. Most of the property is currently vacant and has no forestry or mineral resources which would require BIA management. Tribal housing may require BIA leases and the infrastructure will likely require additional easements to be processed through the BIA. The Tribe has and will continue to maintain the property through its Environmental Department and other appropriate departments. Emergency services to the property are provided by the City and County Fire and Police through agreements between those agencies and the Tribe.

Factor 6 – The extent to which the applicant has provided information that allows the Secretary to comply with 516 DM 1-7, National Environmental Policy Act Revised Implementing Procedures, and 602 DM 2, Land Acquisitions: Hazardous Substances Determination

In accordance with Interior Department Policy (602 DM 2), we are charged with the responsibility of conducting a site assessment for the purposes of determining the potential for and extent of liability from hazardous substances or other environmental remediation or injury. The record includes a negative Phase 1 "Contaminant Survey Checklist" dated March 4, 2014, reflecting that there were no hazardous materials or contaminants.

National Environmental Policy Act Compliance

An additional requirement that has to be met when considering land acquisition proposals is the impact upon the human environment pursuant to the criteria of the National Environmental Policy Act of 1969 (NEPA). The BIA's guidelines for NEPA compliance are set forth in the Bureau of Indian Affairs Manual (59 IAM). An environmental assessment (EA) for the proposed action was distributed for public review and comment for the period beginning August 20, 2013 and noticed to end on September 19, 2013. In response to requests received, the public comment period was extended to October 7, 2013, providing an extension of 19 days. During the extended public comment period, the federal government was partially shut down (from October 1 to October 16, 2013). The Council on Environmental Quality (CEQ) issued guidance regarding NEPA documents under public review during the shutdown that recommended extending any comment period deadlines by a minimum of the period of time equal to the shutdown (16 days). The comment period was therefore extended a second time to November 18, 2013. The EA documents and analyzes potential impacts to land resources, water resources, air quality, biological resources, cultural resources, socioeconomic conditions, resources use patterns (transportation, land use, and agricultural), public services, public health/hazardous materials, and other values (noise and visual resources). A Final EA was prepared and released to the public for review on May 29, 2014. The review period was noticed to end on June 30, 2014. In response to requests received, the review period was extended to July 14, 2014, providing an extension of 15 days. A Finding of No Significant Impact was signed on October 17, 2014 and published on October 22, 2014.

Based on the analysis disclosed in the EA, review and consideration of the public comments received during the review period, responses to the comments, and mitigation measures imposed, the Bureau of Indian Affairs has determined that the proposed Federal action is not a major Federal action significantly affecting the quality of human environment, as defined by NEPA. Therefore, preparation of an Environmental Impact Statement (EIS) is not required.

Factor 7 – The location of the land relative to state boundaries, and its distance from the boundaries of the tribe's reservation

The property is located within the County of Santa Barbara and is approximately 520 miles from the Oregon border, approximately 233 miles from the Nevada border, approximately 307 miles from the Arizona border and approximately 10 miles from the Pacific Ocean. Further, the property lies within the County of Santa Barbara, and lies approximately 23 miles from the City of Santa Barbara. Finally, the property is adjacent to Highway 154 and is a mere 1.6 miles from the Reservation.

Factor 8 – Where land is being acquired for business purposes, the tribe shall provide a plan which specifies the anticipated economic benefits associated with the proposed use.

The Tribe intends to provide tribal housing and supporting infrastructure on a portion of the property. The remainder will be on-going business operations (the already operational vineyards and the stables), for future long range planning and land banking. Both are on-going operations on the fee lands; therefore there are no new economic benefits associated with the acquisition.

Conclusion

Based on the foregoing, we at this time do hereby issue notice of our intent to accept the subject real property into trust. The subject acquisition will vest title in the United States of America in trust for the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation of California in accordance with the Indian Reorganization Act of 1934 (25 U.S.C. § 465).

Should any of the below-listed known interested parties feel adversely affected by this decision, an appeal may be filed within thirty (30) days of receipt of this notice with the Interior Board of Indian Appeals, U.S. Department of the Interior, 801 N. Quincy St., Suite 300, Arlington, Virginia 22203, in accordance with the regulations in 43 CFR 4.310-4.340 (copy enclosed).

Any notice of appeal to the Board must be signed by the appellant or the appellant's legal counsel, and the notice of the appeal must be mailed within thirty (30) days of the date of receipt of this notice. The notice of appeal should clearly identify the decision being appealed.

If possible, a copy of this decision should be attached. Any appellant must send copies of the notice of appeal to: (1) the Assistant Secretary of Indian Affairs, U.S. Department of Interior 1849 C Street, N.W., MS-3071-MIB, Washington, D.C. 20240; (2) each interested party known to the appellant; and (3) this office. Any notice of appeal sent to the Board of Indian Appeals must certify that copies have been sent to interested parties. If a notice of appeal is filed, the Board of Indian Appeals will notify appellant of further appeal procedures. If no appeal is timely filed, further notice of a final agency action will be issued by the undersigned pursuant to 25 CFR 151.12(b). No extension of time may be granted for filing a notice of appeal.

If any party receiving this notice is aware of additional governmental entities that may be affected by the subject acquisition, please forward a copy of this notice to said party, or timely provide our office with the name and address of said party.

Sincerely,

Regional Director

Enclosure:
43 CFR 4.310, et seq.

cc: Distribution List

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Legal Affairs Secretary
Office of the Governor
State Capitol Building
Sacramento, CA 95814

Sara Drake, Deputy Attorney General – 7013 2630 0001 5557 8876
State of California
Department of Justice
P.O. Box 944255
Sacramento, CA 94244-2550

U.S. Senator Dianne Feinstein – 7013 2630 0001 5557 8883
331 Hart Senate Building
Washington, DC 20510

Santa Barbara County Assessor – 7013 2630 0001 5557 8890
105 East Anapamu Street, Suite 204
Santa Barbara , CA 93101

Santa Barbara County Treasurer & Tax Collector – 7013 2630 0001 5557 8906
105 East Anapamu Street
Santa Barbara, CA 93101

Santa Barbara County Sheriff's Department – 7013 2630 0001 5557 8913
4434 Calle Real
Santa Barbara, CA 93110

Santa Barbara County Department of Public Works – 7013 2630 0001 5557 8920
123 East Anapamu Street
Santa Barbara, CA 93101

Santa Barbara County Department of Planning and Development – 7013 2630 0001 5557 8937
123 East Anapamu Street
Santa Barbara, CA 93101-2058

Board of Supervisors – 7013 2630 0001 5557 8944
County of Santa Barbara
105 E. Anapamu Street
Santa Barbara, CA 93101

County Executive Officer – 7013 2630 0001 5557 8951
County of Santa Barbara
105 E. Anapamu Street
Santa Barbara, CA 93101

County of Santa Barbara – 7013 2630 0001 5557 8968
Third District Supervisor
105 East Anapamu Street
Santa Barbara, CA 93101

Santa Barbara County – 7013 2630 0001 5557 8975
Kevin Ready, Senior Deputy County Counsel
105 E. Anapamu Street, Suite, 201
Santa Barbara, CA 93101

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Santa Barbara, CA 93102-1990

City of Buellton – 7013 2630 0001 5557 8999
P.O. Box 1819
Buellton, CA 93427

City of Solvang – 7013 2630 0001 5557 9002
1644 Oak Street
Solvang, CA 93463

Lois Capps – 7013 2630 0001 5557 9019
U.S. House of Representatives
301 E. Carrillo Street, Suite A
Santa Barbara, CA 93101

Stand Up For California – 7013 2630 0001 5557 9026
Cheryl Schmit- Director
P.O. Box 355
Penryn, CA 95663

Santa Ynez Valley Concerned Citizens – 7013 2630 0001 5557 9033
Gerry Shepherd, Treasurer
P.O. Box 244
Santa Ynez, CA 93460

Women's Environmental Watch – 7013 2630 0001 5557 9040
Cathie McHenty, President
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Solvang, CA 93464

Santa Ynez Valley Alliance – 7013 2630 0001 5557 9057
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Santa Ynez Rancho Estates Mutual Water Company, Inc. – 7013 2630 0001 5557 9125
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Santa Ynez, CA 93460

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Santa Ynez, CA 93460

William Devine Esq. – 7013 2630 0001 5557 9163
Allen Matkins Leck Gamble Mallory & Natsis LLP
1900 Main Street, 5th Floor
Irvine, CA 92614-7321

Regular Mail:

Superintendent, Southern California Agency, BIA
1451 Research Park Drive, Suite 100
Riverside, California 92507-2154

state specifically and concisely the grounds upon which it is based.

(b) *Notice; burden of proof.* The OHA deciding official will, upon receipt of a demand for hearing, set a time and place therefor and must mail notice thereof to all parties in interest not less than 30 days in advance; provided, however, that such date must be set after the expiration of the 60-day period fixed for the filing of the demand for hearing as provided in §4.305(a). At the hearing, each party challenging the tribe's claim to purchase the interests in question or the valuation of the interests as set forth in the valuation report will have the burden of proving his or her position.

(c) *Decision after hearing; appeal.* Upon conclusion of the hearing, the OHA deciding official will issue a decision which determines all of the issues including, but not limited to, a judgment establishing the fair market value of the interests purchased by the tribe, including any adjustment thereof made necessary by the surviving spouse's decision to reserve a life estate in one-half of the interests. The decision must specify the right of appeal to the Board of Indian Appeals within 60 days from the date of the decision in accordance with §§4.310 through 4.323. The OHA deciding official must lodge the complete record relating to the demand for hearing with the title plant as provided in §4.236(b), furnish a duplicate record thereof to the Superintendent, and mail a notice of such action together with a copy of the decision to each party in interest.

§4.306 Time for payment.

A tribe must pay the full fair market value of the interests purchased, as set forth in the valuation report or as determined after hearing in accordance with §4.305, whichever is applicable, within 2 years from the date of decedent's death or within 1 year from the date of notice of purchase, whichever comes later.

§4.307 Title.

Upon payment by the tribe of the interests purchased, the Superintendent must issue a certificate to the OHA deciding official that this has been done and file therewith such documents in support thereof as the OHA deciding official may require. The OHA deciding official will then issue an order that the United States holds title to such interests in trust for the tribe, lodge the complete record, including the decision, with the title plant as provided in §4.236(b), furnish a duplicate record thereof to the Superintendent, and mail a notice of such action together with a copy of the decision to each party in interest.

§4.308 Disposition of income.

During the pendency of the probate and up to the date of transfer of title to the United States in trust for the tribe in accordance with §4.307, all income received or accrued from the land interests purchased by the tribe will be credited to the estate.

CROSS REFERENCE: See 25 CFR part 2 for procedures for appeals to Area Directors and to the Commissioner of the Bureau of Indian Affairs.

GENERAL RULES APPLICABLE TO PROCEEDINGS ON APPEAL BEFORE THE INTERIOR BOARD OF INDIAN APPEALS

SOURCE: 66 FR 67656, Dec. 31, 2001, unless otherwise noted.

§4.310 Documents.

(a) *Filing.* The effective date for filing a notice of appeal or other document with the Board during the course of an appeal is the date of mailing or the date of personal delivery, except that a motion for the Board to assume jurisdiction over an appeal under 25 CFR 2.20(e) will be effective the date it is received by the Board.

(b) *Service.* Notices of appeal and pleadings must be served on all parties in interest in any proceeding before the Interior Board of Indian Appeals by the party filing the notice or pleading with the Board. Service must be accomplished upon personal delivery or mailing. Where a party is represented in an appeal by an attorney or other representative authorized under 43 CFR 1.3, service of any document on the attorney or representative is service on the party. Where a party is represented by more than one attorney, service on any one attorney is sufficient. The certificate of service on an attorney or

representative must include the name of the party whom the attorney or representative represents and indicate that service was made on the attorney or representative.

(c) *Computation of time for filing and service.* Except as otherwise provided by law, in computing any period of time prescribed for filing and serving a document, the day upon which the decision or document to be appealed or answered was served or the day of any other event after which a designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, Federal legal holiday, or other nonbusiness day, in which event the period runs until the end of the next day which is not a Saturday, Sunday, Federal legal holiday, or other nonbusiness day. When the time prescribed or allowed is 7 days or less, intermediate Saturdays, Sundays, Federal legal holidays, and other nonbusiness days are excluded in the computation.

(d) *Extensions of time.* (1) The time for filing or serving any document except a notice of appeal may be extended by the Board.

(2) A request to the Board for an extension of time must be filed within the time originally allowed for filing.

(3) For good cause the Board may grant an extension of time on its own initiative.

(e) *Retention of documents.* All documents received in evidence at a hearing or submitted for the record in any proceeding before the Board will be retained with the official record of the proceeding. The Board, in its discretion, may permit the withdrawal of original documents while a case is pending or after a decision becomes final upon conditions as required by the Board.

§4.311 Briefs on appeal.

(a) The appellant may file an opening brief within 30 days after receipt of the notice of docketing. Appellant must serve copies of the opening brief upon all interested parties or counsel and file a certificate with the Board showing service upon the named parties. Opposing parties or counsel will have 30 days from receipt of appellant's brief to file answer briefs, copies of which must be served upon the appellant or counsel and all other parties in interest. A certificate showing service of the answer brief upon all parties or counsel must be attached to the answer filed with the Board.

(b) Appellant may reply to an answering brief within 15 days from its receipt. A certificate showing service of the reply brief upon all parties or counsel must be attached to the reply filed with the Board. Except by special permission of the Board, no other briefs will be allowed on appeal.

(c) The BIA is considered an interested party in any proceeding before the Board. The Board may request that the BIA submit a brief in any case before the Board.

(d) An original only of each document should be filed with the Board. Documents should not be bound along the side.

(e) The Board may also specify a date on or before which a brief is due. Unless expedited briefing has been granted, such date may not be less than the appropriate period of time established in this section.

§4.312 Decisions.

Decisions of the Board will be made in writing and will set forth findings of fact and conclusions of law. The decision may adopt, modify, reverse or set aside any proposed finding, conclusion, or order of a BIA official or an OHA deciding official. Distribution of decisions must be made by the Board to all parties concerned. Unless otherwise stated in the decision, rulings by the Board are final for the Department and must be given immediate effect.

§4.313 Amicus Curiae; intervention; joinder motions.

(a) Any interested person or Indian tribe desiring to intervene or to join other parties or to appear as amicus curiae or to obtain an order in an appeal before the Board must apply in writing to the Board stating the grounds for the action sought. Permission to intervene, to join parties, to appear, or for other relief, may be granted for purposes and subject to limitations established by the Board. This section will be liberally construed.

(b) Motions to intervene, to appear as amicus curiae, to join additional parties, or to obtain an order in an appeal pending before the Board must be served in the same manner as appeal briefs.

§ 4.314 Exhaustion of administrative remedies.

(a) No decision of an OHA deciding official or a BIA official, which at the time of its rendition is subject to appeal to the Board, will be considered final so as to constitute agency action subject to judicial review under 5 U.S.C. 704, unless made effective pending decision on appeal by order of the Board.

(b) No further appeal will lie within the Department from a decision of the Board.

(c) The filing of a petition for reconsideration is not required to exhaust administrative remedies.

§ 4.315 Reconsideration.

(a) Reconsideration of a decision of the Board will be granted only in extraordinary circumstances. Any party to the decision may petition for reconsideration. The petition must be filed with the Board within 30 days from the date of the decision and must contain a detailed statement of the reasons why reconsideration should be granted.

(b) A party may file only one petition for reconsideration.

(c) The filing of a petition will not stay the effect of any decision or order and will not affect the finality of any decision or order for purposes of judicial review, unless so ordered by the Board.

§ 4.316 Remands from courts.

Whenever any matter is remanded from any federal court to the Board for further proceedings, the Board will either remand the matter to an OHA deciding official or to the BIA, or to the extent the court's directive and time limitations will permit, the parties will be allowed an opportunity to submit to the Board a report recommending procedures for it to follow to comply with the court's order. The Board will enter special orders governing matters on remand.

§ 4.317 Standards of conduct.

(a) *Inquiries about cases.* All inquiries with respect to any matter pending before the Board must be made to the Chief Administrative Judge of the Board or the administrative judge assigned the matter.

(b) *Disqualification.* An administrative judge may withdraw from a case in accordance with standards found in the recognized canons of judicial ethics if the judge deems such action appropriate. If, prior to a decision of the Board, a party files an affidavit of personal bias or disqualification with substantiating facts, and the administrative judge concerned does not withdraw, the Director of the Office of Hearings and Appeals will determine the matter of disqualification.

§ 4.318 Scope of review.

An appeal will be limited to those issues which were before the OHA deciding official upon the petition for rehearing, reopening, or regarding tribal purchase of interests, or before the BIA official on review. However, except as specifically limited in this part or in title 25 of the Code of Federal Regulations, the Board will not be limited in its scope of review and may exercise the inherent authority of the Secretary to correct a manifest injustice or error where appropriate.

APPEALS TO THE BOARD OF INDIAN APPEALS IN PROBATE MATTERS

SOURCE: 66 FR 67656, Dec. 31, 2001, unless otherwise noted.

§ 4.320 Who may appeal.

(a) A party in interest has a right to appeal to the Board from an order of an OHA deciding official on a petition for rehearing, a petition for reopening, or regarding tribal purchase of interests in a deceased Indian's trust estate.

(b) Notice of appeal. Within 60 days from the date of the decision, an appellant must file a written notice of appeal signed by appellant, appellant's attorney, or other qualified representative as provided in 43 CFR 1.3, with the Board of Indian Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 801 North Quincy Street, Arlington, Virginia 22203. A

statement of the errors of fact and law upon which the appeal is based must be included in either the notice of appeal or in any brief filed. The notice of appeal must include the names and addresses of parties served. A notice of appeal not timely filed will be dismissed for lack of jurisdiction.

(c) Service of copies of notice of appeal. The appellant must personally deliver or mail the original notice of appeal to the Board of Indian Appeals. A copy must be served upon the OHA deciding official whose decision is appealed as well as all interested parties. The notice of appeal filed with the Board must include a certification that service was made as required by this section.

(d) Action by the OHA deciding official; record inspection. The OHA deciding official, upon receiving a copy of the notice of appeal, must notify the Superintendent concerned to return the duplicate record filed under §§ 4.236(b) and 4.241(d), or under § 4.242(f) of this part, to the Land Titles and Records Office designated under § 4.236(b) of this part. The duplicate record must be conformed to the original by the Land Titles and Records Office and will thereafter be available for inspection either at the Land Titles and Records Office or at the office of the Superintendent. In those cases in which a transcript of the hearing was not prepared, the OHA deciding official will have a transcript prepared which must be forwarded to the Board within 30 days from receipt of a copy of the notice of appeal.

[66 FR 67656, Dec. 31, 2001, as amended at 67 FR 4368, Jan. 30, 2002]

§ 4.321 Notice of transmittal of record on appeal.

The original record on appeal must be forwarded by the Land Titles and Records Office to the Board by certified mail. Any objection to the record as constituted must be filed with the Board within 15 days of receipt of the notice of docketing issued under § 4.332 of this part.

§ 4.322 Docketing.

The appeal will be docketed by the Board upon receipt of the administrative record from the Land Titles and Records Office. All interested parties as shown by the record on appeal must be notified of the docketing. The docketing notice must specify the time within which briefs may be filed and must cite the procedural regulations governing the appeal.

§ 4.323 Disposition of the record.

Subsequent to a decision of the Board, other than remands, the record filed with the Board and all documents added during the appeal proceedings, including any transcripts prepared because of the appeal and the Board's decision, must be forwarded by the Board to the Land Titles and Records Office designated under § 4.236(b) of this part. Upon receipt of the record by the Land Titles and Records Office, the duplicate record required by § 4.320(c) of this part must be conformed to the original and forwarded to the Superintendent concerned.

APPEALS TO THE BOARD OF INDIAN APPEALS FROM ADMINISTRATIVE ACTIONS OF OFFICIALS OF THE BUREAU OF INDIAN AFFAIRS: ADMINISTRATIVE REVIEW IN OTHER INDIAN MATTERS NOT RELATING TO PROBATE PROCEEDINGS

SOURCE: 54 FR 6487, Feb. 10, 1989, unless otherwise noted.

§ 4.330 Scope.

(a) The definitions set forth in 25 CFR 2.2 apply also to these special rules. These regulations apply to the practice and procedure for: (1) Appeals to the Board of Indian Appeals from administrative actions or decisions of officials of the Bureau of Indian Affairs issued under regulations in 25 CFR chapter 1, and (2) administrative review by the Board of Indian Appeals of other matters pertaining to Indians which are referred to it for exercise of review authority of the Secretary or the Assistant Secretary—Indian Affairs.

(b) Except as otherwise permitted by the Secretary or the Assistant Secretary—Indian Affairs by special delegation or request, the Board shall not adjudicate:

(1) Tribal enrollment disputes;

(2) Matters decided by the Bureau of Indian Affairs through exercise of its discretionary authority; or

(3) Appeals from decisions pertaining to final recommendations or actions by officials of the Minerals Management Service, unless the decision is based on an interpretation of Federal Indian law (decisions not so based which arise from determinations of the Minerals Management Service, are appealable to the Interior Board of Land Appeals in accordance with 43 CFR 4.410).

§ 4.331 Who may appeal.

Any interested party affected by a final administrative action or decision of an official of the Bureau of Indian Affairs issued under regulations in title 25 of the Code of Federal Regulations may appeal to the Board of Indian Appeals, except—

(a) To the extent that decisions which are subject to appeal to a higher official within the Bureau of Indian Affairs must first be appealed to that official;

(b) Where the decision has been approved in writing by the Secretary or Assistant Secretary—Indian Affairs prior to promulgation; or

(c) Where otherwise provided by law or regulation.

§ 4.332 Appeal to the Board; how taken; mandatory time for filing; preparation assistance; requirement for bond.

(a) A notice of appeal shall be in writing, signed by the appellant or by his attorney of record or other qualified representative as provided by 43 CFR 1.3, and filed with the Board of Indian Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 801 North Quincy Street, Arlington, Virginia 22203, within 30 days after receipt by the appellant of the decision from which the appeal is taken. A copy of the notice of appeal shall simultaneously be filed with the Assistant Secretary—Indian Affairs. As required by § 4.333 of this part, the notice of appeal sent to the Board shall certify that a copy has been sent to the Assistant Secretary—Indian Affairs. A notice of appeal not timely filed shall be dismissed for lack of jurisdiction. A notice of appeal shall include:

(1) A full identification of the case;

(2) A statement of the reasons for the appeal and of the relief sought; and

(3) The names and addresses of all additional interested parties, Indian tribes, tribal corporations, or groups having rights or privileges which may be affected by a change in the decision, whether or not they participated as interested parties in the earlier proceedings.

(b) In accordance with 25 CFR 2.20(c) a notice of appeal shall not be effective for 20 days from receipt by the Board, during which time the Assistant Secretary—Indian Affairs may decide to review the appeal. If the Assistant Secretary—Indian Affairs properly notifies the Board that he has decided to review the appeal, any documents concerning the case filed with the Board shall be transmitted to the Assistant Secretary—Indian Affairs.

(c) When the appellant is an Indian or Indian tribe not represented by counsel, the official who issued the decision appealed shall, upon request of the appellant, render such assistance as is appropriate in the preparation of the appeal.

(d) At any time during the pendency of an appeal, an appropriate bond may be required to protect the interest of any Indian, Indian tribe, or other parties involved.

[54 FR 6487, Feb. 10, 1989, as amended at 67 FR 4368, Jan. 30, 2002]

§ 4.333 Service of notice of appeal.

(a) On or before the date of filing of the notice of appeal the appellant shall serve a copy of the notice upon each known interested party, upon the official of the Bureau of Indian Affairs from whose decision the appeal is taken, and upon the Assistant Secretary—Indian Affairs. The notice of appeal filed with the Board shall certify that service was made as required by this section and shall show the names and addresses of all parties served. If the appellant is an Indian or an Indian tribe not represented by counsel, the appellant may request the official of the Bureau whose decision is appealed to assist in service of copies of the notice of appeal and any supporting documents.

(b) The notice of appeal will be considered to have been served upon the date of personal service or mailing.

§ 4.334 Extensions of time.

Requests for extensions of time to file documents may be granted upon a showing of good cause, except for the time fixed for filing a notice of appeal which, as specified in § 4.332 of this part, may not be extended.

§ 4.335 Preparation and transmittal of record by official of the Bureau of Indian Affairs.

(a) Within 20 days after receipt of a notice of appeal, or upon notice from the Board, the official of the Bureau of Indian Affairs whose decision is appealed shall assemble and transmit the record to the Board. The record on appeal shall include, without limitation, copies of transcripts of testimony taken; all original documents, petitions, or applications by which the proceeding was initiated; all supplemental documents which set forth claims of interested parties; and all documents upon which all previous decisions were based.

(b) The administrative record shall include a Table of Contents noting, at a minimum, inclusion of the following:

(1) The decision appealed from;

(2) The notice of appeal or copy thereof; and

(3) Certification that the record contains all information and documents utilized by the deciding official in rendering the decision appealed.

(c) If the deciding official receives notification that the Assistant Secretary—Indian Affairs has decided to review the appeal before the administrative record is transmitted to the Board, the administrative record shall be forwarded to the Assistant Secretary—Indian Affairs rather than to the Board.

§ 4.336 Docketing.

An appeal shall be assigned a docket number by the Board 20 days after receipt of the notice of appeal unless the Board has been properly notified that the Assistant Secretary—Indian Affairs has assumed jurisdiction over the appeal. A notice of docketing shall be sent to all interested parties as shown by the record on appeal upon receipt of the administrative record. Any objection to the record as constituted shall be filed with the Board within 15 days of receipt of the notice of docketing. The docketing notice shall specify the time within which briefs shall be filed, cite the procedural regulations governing the appeal and include a copy of the Table of Contents furnished by the deciding official.

§ 4.337 Action by the Board.

(a) The Board may make a final decision, or where the record indicates a need for further inquiry to resolve a genuine issue of material fact, the Board may require a hearing. All hearings shall be conducted by an administrative law judge of the Office of Hearings and Appeals. The Board may, in its discretion, grant oral argument before the Board.

(b) Where the Board finds that one or more issues involved in an appeal or a matter referred to it were decided by the Bureau of Indian Affairs based upon the exercise of discretionary authority committed to the Bureau, and the Board has not otherwise been permitted to adjudicate the issue(s) pursuant to § 4.330(b) of this part, the Board shall dismiss the appeal as to the issue(s) or refer the issue(s) to the Assistant Secretary—Indian Affairs for further consideration.

§ 4.338 Submission by administrative law judge of proposed findings, conclusions and recommended decision.

(a) When an evidentiary hearing pursuant to § 4.337(a) of this part is concluded, the administrative law judge shall recommend findings of fact and conclusions of law, stating the reasons for such recommendations. A copy of the recommended decision shall be sent to each party to the proceeding, the Bureau official involved, and the Board. Simultaneously, the entire record of the proceedings, including the transcript of the hearing before the administrative law judge, shall be forwarded to the Board.

(b) The administrative law judge shall advise the parties at the conclusion of the recommended decision of their right to file exceptions or other

comments regarding the recommended decision with the Board in accordance with § 4.339 of this part.

§ 4.339 Exceptions or comments regarding recommended decision by administrative law judge.

Within 30 days after receipt of the recommended decision of the administrative law judge, any party may file exceptions to or other comments on the decision with the Board.

§ 4.340 Disposition of the record.

Subsequent to a decision by the Board, the record filed with the Board and all documents added during the appeal proceedings, including the Board's decision, shall be forwarded to the official of the Bureau of Indian Affairs whose decision was appealed for proper disposition in accordance with rules and regulations concerning treatment of Federal records.

WHITE EARTH RESERVATION LAND SETTLEMENT ACT OF 1985; AUTHORITY OF ADMINISTRATIVE JUDGES; DETERMINATIONS OF THE HEIRS OF PERSONS WHO DIED ENTITLED TO COMPENSATION

SOURCE: 56 FR 61383, Dec. 3, 1991, unless otherwise noted.

§ 4.350 Authority and scope.

(a) The rules and procedures set forth in §§ 4.350 through 4.357 apply only to the determination through intestate succession of the heirs of persons who died entitled to receive compensation under the White Earth Reservation Land Settlement Act of 1985, Public Law 99-264 (100 Stat. 61), amended by Public Law 100-153 (101 Stat. 886) and Public Law 100-212 (101 Stat. 1433).

(b) Whenever requested to do so by the Project Director, an administrative judge shall determine such heirs by applying inheritance laws in accordance with the White Earth Reservation Settlement Act of 1985 as amended, notwithstanding the decedent may have died testate.

(c) As used herein, the following terms shall have the following meanings:

(1) The term *Act* means the White Earth Reservation Land Settlement Act of 1985 as amended.

(2) The term *Board* means the Board of Indian Appeals in the Office of Hearings and Appeals, Office of the Secretary.

(3) The term *Project Director* means the Superintendent of the Minnesota Agency, Bureau of Indian Affairs, or other Bureau of Indian Affairs official with delegated authority from the Minneapolis Area Director to serve as the federal officer in charge of the White Earth Reservation Land Settlement Project.

(4) The term *party (parties) in interest* means the Project Director and any presumptive or actual heirs of the decedent, or of any issue of any subsequently deceased presumptive or actual heir of the decedent.

(5) The term *compensation* means a monetary sum, as determined by the Project Director, pursuant to section 8(c) of the Act.

(6) The term *adminstrative judge* means an administrative judge or an administrative law judge, attorney-advisor, or other appropriate official of the Office of Hearings and Appeals to whom the Director of the Office of Hearings and Appeals has redelegated his authority, as designee of the Secretary, for making heirship determinations as provided for in these regulations.

(7) The term *appellant* means a party aggrieved by a final order or final order upon reconsideration issued by an administrative judge who files an appeal with the Board.

[56 FR 61383, Dec. 3, 1991; 56 FR 65782, Dec. 18, 1991, as amended at 64 FR 13363, Mar. 18, 1999]

§ 4.351 Commencement of the determination process.

(a) Unless an heirship determination which is recognized by the Act already exists, the Project Director shall commence the determination of the heirs of those persons who died entitled to receive compensation by filing with the administrative judge all data, identifying the purpose for which they are being submitted, shown in the records relative to the family of the decedent.

(b) The data shall include but are not limited to:

Exhibit B

NOTICE OF AVAILABILITY

FINDING OF NO SIGNIFICANT IMPACT FOR THE PROPOSED TRUST ACQUISITION OF FIVE PARCELS KNOWN AS THE CAMP 4 PROPERTY

SANTA YNEZ BAND OF CHUMASH INDIANS

SANTA BARBARA COUNTY, CALIFORNIA

Notice is hereby given that the Bureau of Indian Affairs (BIA) has issued a Finding of No Significant Impact (FONSI), determining that the proposed trust acquisition of 5 parcels encompassing a total of approximately 1,433 acres (the site), by the United States for the Santa Ynez Band of Chumash Indians (Tribe) will not result in significant effects to the quality of the human environment. Therefore, an Environmental Impact Statement is not required. The BIA's determination is based upon the analysis in the Environmental Assessment and Final Environmental Assessment, consideration of comments received during the public review periods, and the implementation of mitigation measures. To allow for public review, no decision will be made during a period of 30-days beyond the signing of the FONSI.

The proposed Federal action is the fee-to-trust transfer of 5 parcels totaling 1,433± acres, which would result in the development of up to 143 residential units. The proposed trust parcels are located east of State Route 154 and north of Armour Ranch Road in an unincorporated area of Santa Barbara County, east of the Town of Santa Ynez, 3.95 miles east of the City of Solvang, and 22.2 miles northwest of the City of Santa Barbara, California. The project site is within the "Santa Ynez Valley Planning Area" of Santa Barbara County and occurs in Section 8, Township 6 North, Range 30 West on the "Santa Ynez," California U.S. Geological Survey (USGS) 7.5-Minute Topographic Quadrangle. The purpose of the proposed action is to provide necessary housing in close proximity to the existing Reservation for the Tribe's current members and future generations, ensuring existing and future members are afforded the ability to live under Tribal governance as a community within the Tribe's ancestral and historic land holdings. The Tribe proposes to provide housing assignments to Tribal members who do not currently have assignments on the existing Reservation. Additional supporting infrastructure is also planned including access roads, a centralized wastewater treatment plant, and on-site water supply facilities.

The FONSI is a finding on environmental effects, not a decision to proceed with an action, therefore it cannot be appealed. 25 C.F.R. Part 2.7 requires a 30-day appeal period after the decision to proceed with the action is made before the action may be implemented. Appeal information will be made publicly available when the decision to proceed is made.

Copies of the FONSI are also available for review at www.ChumashEA.com. For more information, please contact Chad Broussard, Environmental Protection Specialist, Bureau of Indian Affairs, Pacific Regional Office, 2800 Cottage Way, Sacramento, CA 95825, phone (916) 978-6165, email chad.broussard@bia.gov.

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of January, 2015, I caused to be served the NOTICE OF APPEAL and STATEMENT OF REASONS by U.S.P.S. postage pre-paid certified mail to each of the following persons or parties known or believed to be interested in this matter:

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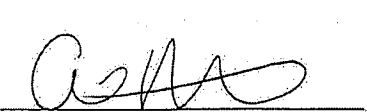

Cierra Rogstad