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9 Brian Kramer and Suzanne Kramer

8 **UNITED STATES DEPARTMENT OF INTERIOR**  
9 **INTERIOR BOARD OF INDIAN APPEALS**

11 IN RE: DECEMBER 24, 2014, DECISION )  
12 TO TAKE CERTAIN LAND IN SANTA )  
13 BARBARA COUNTY, CALIFORNIA, )  
14 INTO TRUST )

**NOTICE OF APPEAL**

**(Appeal of December 24, 2014, Decision of  
the Pacific Regional Director to Take the  
Camp 4 Property into Trust)**

**(Statement of Reasons for Appeal is  
submitted herewith - 43 C.F.R.  
§4.332(a)(2))**

**(Certificate of Service is submitted  
herewith - 43 C.F.R. §4.310(b) and  
§4.333(a))**

18 Pursuant to 25 C.F.R. Part 2 and 43 C.F.R. Part 4, Brian Kramer and Suzanne Kramer  
19 (collectively "Kramers") appeal to the Interior Board of Indian Appeals the December 24, 2014,  
20 NOTICE OF DECISION of the Pacific Regional Director of the Bureau of Indian Affairs (BIA).

21 1. The name, address and contact information of Appellants are as follows: Brian  
22 Kramer and Suzanne Kramer, represented by R. Brian Kramer of the Law Office of R. Brian  
23 Kramer, 1230 Rosecrans Avenue, Suite 300, Manhattan Beach, California 90266, Tel. No. (310)  
24 536-9501 & Fax No. (310) 536-9503.

25 2. The NOTICE OF DECISION being appealed is the December 24, 2014, decision  
26 of the Pacific Regional Director to take into trust approximately 1,427 acres of land in Santa  
27 Barbara County, California, for the Santa Ynez Band of Chumash Mission Indians of the Santa  
28 Ynez Reservation of California (hereinafter referred to as the "Tribe"). A copy of the decision

1 being appealed is attached as Exhibit "A" and is made a part hereof by reference. Exhibit "A"  
2 constitutes a letter dated December 24, 2014, entitled NOTICE OF DECISION, from Pacific  
3 Regional Director Amy Dutschke to Vincent P. Armenta, Chairperson of the Santa Ynez Band of  
4 Chumash Mission Indians.

5 3. Appellants are interested parties who reside in close proximity to Camp 4 and are  
6 adversely affected by the December 24, 2014, NOTICE OF DECISION issued by Pacific  
7 Regional Director Amy Dutschke of the Bureau of Indian Affairs (BIA).

8 4. This NOTICE OF APPEAL has been served on interested parties as prescribed by  
9 43 C.F.R. §4.310(b) and §4.333(a), and as set forth in the attached Certificate of Service.

10 5. The "Statement of Reasons" for this Appeal is attached to this NOTICE OF  
11 APPEAL in accordance with 43 C.F.R. §4.332(a)(2).

12 6. Appellants request the Board vacate the BIA's NOTICE OF DECISION of  
13 December 24, 2014, to accept the 1,427 acre Camp 4 property into trust and vacate the FONSI on  
14 which the NOTICE OF DECISION was based and Appellants further request the Board issue a  
15 finding that an Environmental Impact Statement (EIS) is required and the Williamson Act  
16 contracts, as acknowledged in the Final EA and by the Tribe, preclude development of Camp 4  
17 prior to 2023.

18 7. All notices and communications concerning this Appeal should be directed to R.  
19 Brian Kramer of the Law Office of R. Brian Kramer, 1230 Rosecrans Avenue, Suite 300,  
20 Manhattan Beach, California 90266, Tel. No. (310) 536-9501 & Fax No. (310) 536-9503.

21 DATED: January 6, 2015

Respectfully Submitted,

22  
23 BY:

  
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26 Attorney for Appellants, Brian Kramer and Suzanne  
27 Kramer  
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**BEFORE THE  
INTERIOR BOARD OF INDIAN APPEALS**

IN RE: DECEMBER 24, 2014, DECISION )  
TO TAKE CERTAIN LAND IN SANTA )  
BARBARA COUNTY, CALIFORNIA, )  
INTO TRUST )

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**STATEMENT OF REASONS**  
  
(Submitted with NOTICE OF APPEAL of  
December 24, 2014, Decision of the Pacific  
Regional Director to Take the Camp 4  
Property into Trust)

Brian Kramer and Suzanne Kramer (collectively “Kramers”) appeal the December 24, 2014, NOTICE OF DECISION of the Pacific Regional Director of the Bureau of Indian Affairs (“BIA”), United States Department of the Interior, to take into trust approximately 1,427 acres of land in Santa Barbara County, California, for the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation of California. A copy of the NOTICE OF DECISION is attached hereto as Exhibit “A”.

**IDENTIFICATION OF THE CASE**

This Appeal arises out of the December 24, 2014, NOTICE OF DECISION (hereinafter referred to as the “Decision”) of the Pacific Regional Director of the Bureau of Indian Affairs (“BIA”) to take into trust approximately 1,427 acres of off-reservation land in Santa Barbara County, California, for the Santa Ynez Band of Chumash Mission Indians (hereinafter the “Tribe”) without a required Environmental Impact Statement (“EIS”). The land involved consists of five (5) separate parcels of land owned in fee by the Tribe which land is commonly referred to as Camp 4. The Environmental Assessment (“EA”) and Final EA released by the BIA in August 2013 and May 2014 revealed the Tribe’s proposed development of Camp 4 will include the following, among other things: the construction of 143 homes with sizes between

1 3,000 and 5,000 square feet; the removal of between 50 and 70 mature oak trees; the  
2 construction of a sewer system and sewage waste plant; the construction of a water treatment  
3 plant; the construction of a 12,042 square foot tribal facility; the construction of roads; the  
4 construction of parking facilities; significant grading of the land, among other things.

5 The proposed development of Camp 4, the issues raised in the EA and Final EA, along  
6 with the public comments to the EA and Final EA, make it abundantly clear the proposed  
7 development will have serious and significant detrimental social, economic and environmental  
8 impacts on the local community and the County of Santa Barbara which negative impacts require  
9 a complete and comprehensive EIS. Moreover, the detrimental impacts and proposed mitigation  
10 efforts related to the proposed development were not adequately evaluated, assessed and  
11 addressed in the EA, Final EA and FONSI released and relied upon by the BIA. Despite the  
12 obvious need for an EIS, the BIA issued a Finding of No Significant Impact (“FONSI”) on or  
13 about October 17, 2014. The FONSI is not supported by the record and the magnitude of the  
14 project and the far reaching negative impacts of the proposed Camp 4 development. Moreover,  
15 the FONSI lacks credibility, clarity, transparency, logic and reason and is replete with self-  
16 serving and conclusionary findings of no significant adverse impact and dismissive references to  
17 the comments and information that address real and significant environmental impacts caused by  
18 the proposed Camp 4 development.

19 This Appeal also challenges the FONSI as being contrary to law and fact as the FONSI  
20 uses an inappropriate present-day baseline for a development that will not commence until 2023  
21 at the earliest; the FONSI is based on an Environmental Assessment when it must be based on an  
22 EIS which has not been conducted; the proposed project threatens unique geographical concerns;  
23 the proposed project threatens violations of local law and protective regulations; the proposed  
24 project impacts public health and safety concerns; the proposed project will put an unreasonable  
25 burden on law enforcement, fire and emergency services, schools, parks and recreation; the  
26 proposed project will impact ground water resources; the proposed project raises issues about  
27 100's of tons of solid waste per year; the proposed project will have a major impact on traffic; the  
28 project will threaten endangered species and unique habitats; the environmental impacts of the

1 project are controversial; and, the proposed project will impact visual resources. The cumulative  
2 impact of all of the above is greater than the sum of the above, i.e., there is a synergistic effect,  
3 and the FONSI does not address the cumulative impacts of the potential development.

4 On December 24, 2014, the Pacific Regional Director of the BIA, Amy Dutschke, issued  
5 a NOTICE OF DECISION based on the EA, Final EA, public comments and the FONSI  
6 wherein the Regional Director erroneously concluded “. . . the proposed Federal action is not a  
7 major Federal action significantly affecting the quality of human environment, as defined by  
8 NEPA. Therefore, preparation of an Environmental Impact Statement (EIS) is not required.”  
9 (Pg. 24). In addition, the Decision concluded by stating: “Based on the above, we at this time do  
10 hereby issue notice of our intention to accept the subject real property into trust.” (Pg. 25). This  
11 appeal addresses the BIA’s December 24, 2014, NOTICE OF DECISION because it is incorrect  
12 as a matter of law and fact and is based on the BIA’s reliance on flawed and erroneous  
13 conclusions set forth in the EA, Final EA and the FONSI resulting in the BIA’s erroneous  
14 conclusion that an EIS is not required. The Decision is not supported by the record and the  
15 magnitude of the project and the far reaching negative impacts of the proposed Camp 4  
16 development. Moreover, the Decision lacks credibility, clarity, transparency, logic and reason  
17 and is replete with self-serving and conclusionary findings of no significant adverse impact and  
18 dismissive references to the comments that address real and significant environmental impacts of  
19 the Camp 4 development.

20 In addition, this Appeal addresses the failure of the FONSI and NOTICE OF DECISION  
21 to address the fact the Camp 4 property is the subject of Williamson Act contracts that do not  
22 expire until 2023. The Final EA expressly states: “**It should be noted that construction of the**  
23 **selected project alternative would not begin until 2023.**” ( Final EA, Section 2.2.9, page 2-9).  
24 Although the Tribe and Final EA acknowledge the restrictions imposed by the Williamson Act  
25 contracts and that construction “**would not begin until 2023,**” neither the FONSI nor the  
26 NOTICE OF DECISION address the restrictions on development of Camp 4 until 2023, which  
27 restrictions run with the land, i.e., development of Camp 4 is precluded prior to 2023 at which  
28 time the grace period for the non-renewal of the Williamson Act contracts end. Precluding

1 development until 2023 is essential for appropriate planning, financially and otherwise, by the  
2 State, County, local communities and local residents.

3  
4 **STATEMENT OF REASONS FOR APPEAL**

5  
6 **A. The Decision Failed to Comply with the National Environmental Policy Act.**

7 The BIA's NOTICE OF DECISION to take the 1,427 acre Camp 4 property into trust was  
8 in error because it was based on an inadequate EA and Final EA and a flawed and erroneous  
9 FONSI and the Decision failed to comply with the National Environmental Policy Act (NEPA).  
10 The Decision is in error as it failed to take into consideration a detailed and comprehensive  
11 Environmental Impact Statement ("EIS") is required. The EA, Final EA, FONSI and NOTICE  
12 OF DECISION all grossly understate the project's impact on the local environment and  
13 communities, overstate the potential effectiveness of the proposed mitigation efforts, fail to  
14 disclose the project's long-term, cumulative impacts including its growth-inducing impacts,  
15 potential impacts on water supply and water rights, fail to disclose the project's impacts on the  
16 ability of local entities to provide vital public safety services including emergency medical  
17 services and police and fire services, fail to adequately and appropriately address the  
18 development's conflict with the Santa Barbara County General Plan, Santa Ynez Community  
19 Plan and County of Santa Barbara land use regulations, fail to properly and accurately address the  
20 financial impact and burdens on the local community and Santa Barbara County (including the  
21 impact from removal of the property from the tax rolls), fail to adequately address the need to  
22 take all five (5) parcels into trust, and fail to adequately address the purpose for which all the  
23 land will be used (including the land for "land-banking").

24 The record before the BIA clearly raises questions about the significant environmental  
25 impact the Camp 4 development will bring about. When questions of significant impact are  
26 raised, the National Environmental Policy Act (NEPA) requires the BIA to prepare an EIS.  
27 *Natural Res. Def. Counsel v. Duvall*, 777 F. Supp. 1533, 1537 (E.D. Cal. 1991). Therefore, it is  
28 respectfully requested the Board vacate the NOTICE OF DECISION and rescind the FONSI of

1 October 17, 2014, and order an EIS for the proposed development that addresses a relevant time  
2 frame when environmental impacts can be fully analyzed when the Williamson Act restrictions  
3 permit development in 2023.

4 Even if the mitigation measures suggested in the EA and Final EA were performed, the  
5 mitigation measures are inadequate to render the Camp 4 impacts insignificant. The proposed  
6 development will cause significant negative environmental impact that must be thoroughly  
7 evaluated in an EIS. The May 2014 Final EA, Vol. I, page 2-17, states:

8 “Impacts to biological resources would be greater under Alternative A due to the  
9 size of the assignments. Under Alternative A, approximately 330.11 acres of  
10 critical habitat for protected species would be removed from designation. Under  
11 Alternative B, approximately 65.28 acres of the critical habitat would be removed  
12 from designation. Both alternatives would **adversely impact** water of the U.S.,  
13 special-status species, protected oak trees, and migratory birds.” (Emphasis added)

14 The Comment Letter from the California Department of Fish and Wildlife, dated October  
15 4, 2013 (see Comment Letter S4) states the following with respect to the proposed project’s  
16 “Urban-Wildlife Interface”:

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

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

27 California and especially Santa Barbara County are experiencing a severe drought and  
28 water has become very scarce. The potential Camp 4 development requires more exhaustive  
studies regarding water needs and the impact on neighboring wells, especially in light of the  
uncertainty of what actual development will take place. The May 2014 Final EA, Vol. II, page 2-  
10, states:

“Increased 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.”

1 One cannot leave up to chance there will be sufficient water or that there will not be significant  
2 negative impact on neighboring wells. Proper studies, planning and review is required to address  
3 all of the environmental concerns over the potential Camp 4 development. That is the proper and  
4 responsible way to proceed with any development of the size and scope of Camp 4.

5 The significant negative impacts caused by the proposed Camp 4 development will be felt  
6 directly by residents of the Santa Ynez Valley and Santa Barbara County, along with appellants.  
7 The Final EA, FONSI and NOTICE OF DECISION did not adequately respond to or address  
8 comments submitted by the public that addressed significant negative environmental impacts and  
9 concerns involving the proposed development of Camp 4. Instead, the BIA ignored and  
10 disregarded a record that clearly raised questions about significant environmental impacts the  
11 Camp 4 development will effectuate. To say otherwise is disingenuous. When such  
12 environmental questions exist, the National Environmental Policy Act (“NEPA”) requires the  
13 BIA to prepare an EIS. The BIA was in error in relying on a flawed and deficient EA as an EA is  
14 appropriate only “where no effect on the environment is possible.” A detailed and comprehensive  
15 EIS is essential for the protection of the environment and to provide transparency and credibility  
16 to the process. This should not be a political process or political decision but a process and  
17 decision based on what is best for the environment and the surrounding community. A decision  
18 based on an EA is not in the best interest of the environment, is not credible and lacks  
19 transparency. The environment deserves the benefit of a detailed and comprehensive EIS.

20 The environmental issues involved are of paramount importance to all parties and the  
21 failure to initiate and prepare a timely EIS, as required by NEPA, will most likely effectuate  
22 expensive and time consuming litigation over environmental issues that should be resolved at  
23 this time. The Camp 4 development is a “Pandora’s Box” full of significant environmental  
24 consequences awaiting any development that is not preceded by an EIS. Because no  
25 development is permitted or planned prior to 2023 pursuant to the Williamson Act contracts on  
26 Camp 4, there is plenty of time to prepare an extensive EIS. Any doubt as to the environmental  
27 impacts of the Camp 4 development should be resolved in favor of the environment and the  
28 preparation of an EIS. This “Pandora’s Box” must not be opened without an EIS.



1 No private developer would be allowed to commence such a large scale project in Santa  
2 Barbara County without an EIS. Moreover, any private developer would be required to provide  
3 detailed plans, drawings and specifications that specifically set forth what is going to be built  
4 rather than setting forth vague potential alternatives that may or may not be actually constructed  
5 once the land is transferred into trust. No such detailed plans, drawings or specifications were  
6 submitted in connection with the proposed Camp 4 development. The NOTICE OF DECISION  
7 should be vacated and an EIS initiated and completed to address all environmental issues. To do  
8 less than a complete EIS is an affront to the environment and the dereliction of the  
9 responsibilities of everybody involved in the fee-to-trust process involving Camp 4. It is  
10 inconceivable the Federal Government is not insisting an EIS be performed in connection with  
11 the proposed Camp 4 development.

12 **B. The BIA Failed to Consider All Facts Under 25 C.F.R. §151.10 & §151.11.**

13 The BIA's Decision to take the 1,427 acre Camp 4 property into trust was in error  
14 because the BIA failed to properly consider all factors under 25 C.F.R. §151.10 and §151.11.  
15 While the Decision purports to consider all the factors in those regulations, a review of the BIA's  
16 analysis reveals it failed to properly consider important information related to those factors. The  
17 regulations require the BIA to consider, among other things, tribal needs for additional lands; the  
18 purposes for which the land will be used; the impact on the State and its political subdivisions  
19 resulting from the removal of the land from the tax rolls; jurisdictional problems and potential  
20 conflicts of land use which may arise; and the extent to which the Trine has provided information  
21 that allows the Secretary to comply with NEPA and the regulations adopted by the Department of  
22 the Interior and BIA related to NEPA.

23 As set forth above, the Decision is in error as it fails to take into consideration a detailed  
24 and comprehensive EIS is required. The EA, Final EA, FONSI and NOTICE OF DECISION all  
25 grossly understate the project's impact on the local environment and communities, overstate the  
26 potential effectiveness of the proposed mitigation efforts, fail to properly evaluate the project's  
27 long-term, cumulative impacts including its growth-inducing impacts, potential impacts on water  
28 supply and water rights, fail to properly evaluate the project's impacts on the ability of local

1 entities to provide vital public safety services including emergency medical services and police  
2 and fire services, fail to adequately address the development's conflict with the Santa Barbra  
3 County General Plan, Santa Ynez Community Plan and Santa Barbara County land use  
4 regulations, fail to properly address the financial impact and burdens on the local community and  
5 Santa Barbara County (including the impact from removal of the property from the tax rolls), fail  
6 to properly address the need to take all five (5) parcels into trust, and fail to properly address the  
7 purposes for which all the land will be used (including land for "land-banking").

8         There was considerable information available the BIA should have properly considered  
9 with respect to the above factors, but it failed to do so. The BIA did not properly assess the  
10 inadequacies of the EA, Final EA and FONSI and the need for a comprehensive EIS to address  
11 the significant negative environmental impacts of the proposed development. The BIA failed to  
12 properly address information related to conflicts between the proposed development and local  
13 land use regulations. The BIA failed to properly address information related to the significant  
14 financial and environmental impact loss of local jurisdiction will have on the local community.

15         The BIA failed to address the fact that all of the Camp 4 property is the subject of  
16 Williamson Act contracts that do not expire until 2023. The Final EA expressly states: "**It**  
17 **should be noted that construction of the selected project alternative would not begin until**  
18 **2023.**" ( Final EA, Section 2.2.9, page 2-9). Although the Band and Final EA acknowledge the  
19 restrictions imposed by the Williamson Act contracts, neither the FONSI nor the NOTICE OF  
20 DECISION address the restrictions on development of Camp 4 until 2023, which restrictions run  
21 with the land, i.e., development of Camp 4 is precluded prior to 2023 at which time the grace  
22 period for the non-renewal of the Williamson Act contracts end. Precluding development prior  
23 to 2023 is essential for appropriate planning, financially and otherwise, by the State, County,  
24 local communities and local residents. The Camp 4 Final EA of May 2014 states in **Section**  
25 **2.2.9 PROJECT CONSTRUCTION** (page 2-9) the following:

26         ". . . For the purpose of evaluating potential impacts to resources in the Final EA,  
27 it is assumed that **construction of the project would begin after the grace**  
28 **period for the non-renewal of the Williamson Act contracts has ended**  
(pursuant to Tribal Resolution 931 dated July 1, 2013) and would be phased over  
approximately 4 to 9 years as new tribal homes are needed. . . . **It should be**

1 **noted that construction of the selected project alternative would not begin**  
2 **until 2023**; however, for the purpose of evaluating impacts to other resources (e.g.  
3 land use), the construction date was assumed to be 2014 to apply conservative  
4 assumptions where appropriate.” (Emphasis added)

5 Section 3.8.3 of the Camp 4 Final EA, page 3-64, states the following concerning the application  
6 of the *Williamson Act* to the Camp 4 property:

7 “All of the parcels within the project site are under active Williamson Act  
8 contracts (Santa Barbara County, 2009a).”

9 Section 3.8.3 of the Camp 4 Final EA further states the following with respect to the  
10 “*Nonrenewal Process*”:

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

17 The County of Santa Barbara and the communities of the Santa Ynez Valley are entitled  
18 to have the above representations in the Final EA honored by the Tribe, the BIA and the United  
19 States of America so that no construction is allowed before 2023. Compliance with the  
20 Williamson Act contracts and the representations in the Final EA are critical for appropriate  
21 planning, financially and otherwise, by the State, County, local communities and local residents.  
22 The BIA’s silence concerning the limitations of the Williamson Act contracts is clearly error. In  
23 addition to the above arguments, Appellants reserve the right to assert any and all grounds timely  
24 raised by other interested parties.

25 **C. The BIA Decision is Arbitrary and Capricious.**

26 The BIA Decision to take the 1,427 acre Camp 4 property into trust was in error because  
27 it was arbitrary and capricious. The BIA’s failure to properly consider and analyze each of the  
28 elements set forth in 25 C.F.R. Part 151 renders the Decision arbitrary and capricious, an abuse  
of discretion, and not in accordance with the law. *Village of Ruidoso*, 32 IBIA 130, 138-140  
(1998) (vacating the Area Director’s decision because it was not clear that the Area Director  
considered all relevant facts relating to the proposed land acquisition). In addition, the BIA acted

1 in an arbitrary and capricious manner by summarily rejecting, dismissing and ignoring relevant  
2 and credible information and comments about the significant financial and environmental  
3 impacts the proposed development will cause the Santa Ynez Valley and Santa Barbara County  
4 which environmental impacts mandate a detailed and comprehensive EIS. Furthermore, the BIA  
5 ignored the Tribe's acknowledgment of the Williamson Act contracts that restrict development  
6 prior to 2023. The BIA merely rubber stamped its EA and FINAL EA with approval and ignored  
7 and rejected the public comments of significant negative financial and environmental impacts  
8 and the BIA rendered a flawed and erroneous FONSI which was then used as the basis for a  
9 flawed and defective NOTICE OF DECISION. Based on the above, Appellants request the relief  
10 requested below.

11 **RELIEF REQUESTED**

12 Appellants request the Board vacate the BIA's FONSI and NOTICE OF DECISION of  
13 December 24, 2014, to accept the 1,427 acre Camp 4 property into trust, and remand the matter  
14 to the Pacific Regional Director for consideration of additional information and a reasonable  
15 determination based on the record, including a finding that a detailed and comprehensive EIS  
16 must be prepared and that there be full compliance with the Williamson Act contracts as  
17 acknowledged by the Tribe and as set forth in the Final EA which contracts preclude  
18 development prior to 2023. Moreover, Appellants request the Board issue a finding an EIS is  
19 required and the Williamson Act contracts, as acknowledged in the Final EA and by the Tribe,  
20 preclude development of Camp 4 prior to 2023. In addition to the relief requested above,  
21 Appellants reserve the right to request any and all relief timely sought by other interested parties.

22 DATED: January 6, 2015

23 BY: *R. Brian Kramer*  
24 **R. BRIAN KRAMER, ESQ.**  
25 **LAW OFFICE OF R. BRIAN KRAMER**  
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Attorney for Appellants, Brian Kramer and Suzanne Kramer

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**CERTIFICATE OF FILING AND SERVICE**

I certify that a true and correct copy of this NOTICE OF APPEAL, including Exhibit "A", was mailed to, and thus filed with, Interior Board of Indian Appeals, U.S. Department of the Interior, by first class mail, postage prepaid on January 6, 2015, addressed to:

Interior Board of Indian Appeals [U.S. Mail and Registered Mail - Return Receipt]  
U.S. Department of the Interior  
801 N. Quincy Street, Suite 300  
Arlington, Virginia 22203

I certify that a true and correct copy of this NOTICE OF APPEAL, including Exhibit "A", was mailed to, and thus filed with, Assistant Secretary of Indian Affairs, by first class mail, postage prepaid on January 6, 2015, addressed to:

Assistant Secretary of Indian Affairs [U.S. Mail and Registered Mail - Return Receipt]  
U.S. Department of Interior  
1849 C Street, N.W.  
MS-3071-MIB  
Washington, D.C. 20240

I certify that a true and correct copy of this NOTICE OF APPEAL, including Exhibit "A", was mailed to the Regional Director of the Bureau of Indian Affairs (BIA), from whose December 24, 2014, Decision this appeal is taken, by first class mail, postage prepaid on January 6, 2015, addressed to:

Amy Dutschke [U.S. Mail and Registered Mail - Return Receipt]  
Regional Director  
Bureau of Indian Affairs  
Pacific Regional Office  
U.S. Department of the Interior  
2800 Cottage Way  
Sacramento, California 95825

I certify that a true and correct copy of this NOTICE OF APPEAL, including Exhibit "A", was mailed to the following Interested Parties and/or Interested Parties' Representatives as listed in the Distribution List attached to the December 24, 2014, NOTICE OF DECISION, by first class mail, postage prepaid on January 6, 2015, addressed to:

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

The Honorable Lois Capps  
U.S. House of Representatives  
301 East Carrillo Street, Suite A  
Santa Barbara, California 93101

California State Clearinghouse  
Office Planning and Research  
P.O. Box 3044  
Sacramento, California 95814

1 Mr. Daniel Powell  
Legal Affairs Secretary  
2 Office of the Governor  
State Capitol Building  
3 Sacramento, California 95814  
Sara Drake, Deputy Attorney General  
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331 Hart Senate Building  
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Santa Barbara County Assessor  
12 105 East Anapamu Street, Suite 204  
Santa Barbara, California 93101  
13  
Santa Barbara County Treasurer & Tax Collector  
14 105 East Anapamu Street  
Santa Barbara, California 93101  
15  
Santa Barbara County Sheriff's Department  
16 4434 Calle Real  
Santa Barbara, California 93110  
17  
Santa Barbara County Department of Public Works  
18 123 East Anapamu Street  
Santa Barbara, California 93101  
19  
Santa Barbara County Department of  
20 Planning & Development  
123 East Anapamu Street  
21 Santa Barbara, California 93101-2058  
22  
Board Supervisors  
County of Santa Barbara  
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County Executive Officer  
County of Santa Barbara  
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Third District Supervisor
- 2 105 East Anapamu Street  
Santa Barbara, California 93101
- 3
- 4 Santa Barbara County  
Kevin Ready, Senior Deputy County Counsel  
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5 Santa Barbara, California 93101
- 6 City of Santa Barbara  
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- 7 Santa Barbara, California 93102-1990
- 8 City of Buellton  
P.O. Box 1819
- 9 Buellton, California 93427
- 10 City of Solvang  
1644 Oak Street
- 11 Solvang, California 93463
- 12 Stand Up For California  
Cheryl Schmit - Director
- 13 P.O. Box 355  
Penryn, California 95663
- 14
- 15 Santa Ynez Valley Concerned Citizens  
Gerry Shepherd, Treasurer  
P.O. Box 244
- 16 Santa Ynez, California 93460
- 17 Women's Environmental Watch  
Cathie McHenty, President
- 18 P.O. Box 830  
Solvang, California 93464
- 19
- 20 Santa Ynez Valley Alliance  
Mark Oliver, President  
P.O. Box 941
- 21 Santa Ynez, California 93460
- 22 Santa Ynez Community Services District  
P.O. Box 667
- 23 Santa Ynez, California 93460
- 24 Andi Culberton  
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- 25 Santa Ynez, California 93460
- 26 Cathy Christian  
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- 27 Attorneys At Law  
1415 L Street, Suite 1200
- 28 Sacramento, California 95814

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Rob Walton  
305 White Oak Road  
Santa Ynez, California 93460

Kathy Cleary  
P.O. Box 936  
Los Olivos, California 93441

Preservation of Los Olivos  
P.O. Box 722  
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Santa Ynez Rancho Estates Mutual Water Company, Inc.  
5475 Happy Canyon Road  
Santa Ynez, California 93460

Kelly Patricia Burke/Sean Wiczak  
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Santa Ynez, California 93460

Erica Williams/Ryan Williams  
1899 View Drive  
Santa Ynez, California 93460

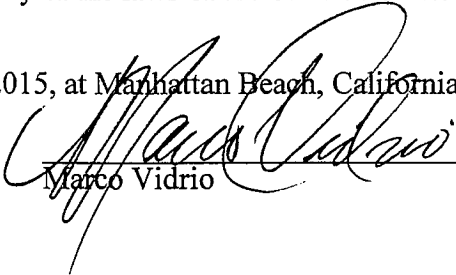
Linda Kastner  
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William Devine, Esq.  
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1900 Main Street, 5<sup>th</sup> Floor  
Irvine, California 92614-7321

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

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

Executed this 6<sup>th</sup> day of January, 2015, at Manhattan Beach, California.

  
\_\_\_\_\_  
Marco Vidrio



**EXHIBIT "A"**



IN REPLY REFER TO:

## United States Department of the Interior

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

**DEC 24 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

**TAKE PRIDE  
IN AMERICA** 

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<sup>1</sup>. 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.<sup>2</sup>

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

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<sup>1</sup> 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>.

<sup>2</sup> 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 Schwarzenegger'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."<sup>3</sup> 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.<sup>4</sup>

§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.

<sup>3</sup> See Solicitor's Opinion dated May 23, 2012.

<sup>4</sup> *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.<sup>5</sup>

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<sup>6</sup>. Or, in other words, "the inquiry is whether the Tribe needs the land, not whether it needs the land to be in trust."<sup>7</sup>

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<sup>5</sup> 79 Fed. Reg. 24648.

<sup>6</sup> See, e.g., *Yreka v. Salazar* 2011 WL 2433660 (2011).

<sup>7</sup> *Thurston County v. Great Plains 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."<sup>8</sup>

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<sup>9</sup>. 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<sup>10</sup>.

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,<sup>11</sup> 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

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<sup>8</sup> *Benewah County v. Northwest Regional Director* 55 IBIA 281 (2012).

<sup>9</sup> See, e.g., *City of Tacoma v. Andrus* 457 F.Supp. 342 (1978).

<sup>10</sup> See, e.g., *Sauk County v. Department of Interior* 2008 WL 2225680 (2008).

<sup>11</sup> Final EA Section 2.2.3.



regarding the proposed use and is not required to speculate about possible or potential uses<sup>12</sup>.

§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<sup>13</sup>. 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<sup>14</sup>. 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<sup>15</sup>.

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<sup>16</sup>. As is more thoroughly detailed in the Final EA<sup>17</sup> and its responses to comments,<sup>18</sup> 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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<sup>12</sup> See, e.g., Yreka v. Salazar, *infra*.

<sup>13</sup> County of Charles Mix v. USDOJ 2011 WL 1303125 (2011).

<sup>14</sup> Thurston County, *infra*.

<sup>15</sup> Benewah County, *infra*.

<sup>16</sup> See, e.g., Benewah County, *infra*.

<sup>17</sup> Final EA Sections 3.9 and 4.1.9

<sup>18</sup> 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<sup>19</sup>. 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<sup>20</sup>. 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

<sup>19</sup> Thurston County, *infra*.

<sup>20</sup> 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<sup>21</sup>. 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.

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<sup>21</sup> 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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Sacramento, CA 95814

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State of California  
Department of Justice  
P.O. Box 944255  
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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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P.O. Box 1990  
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  
P.O. Box 830  
Solvang, CA 93464

Santa Ynez Valley Alliance – 7013 2630 0001 5557 9057  
Mark Oliver, President  
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Santa Ynez Community Services District – 7013 2630 0001 5557 9064  
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Los Olivos, CA 93441

Santa Ynez Rancho Estates Mutual Water Company, Inc. – 7013 2630 0001 5557 9125  
5475 Happy Canyon Road  
Santa Ynez, CA 93460

Kelly Patricia Burke/Sean Wiczak – 7013 2630 0001 5557 9132  
1895 View Drive  
Santa Ynez, CA 93460

Erica Williams/Ryan Williams – 7013 2630 0001 5557 9149  
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Linda Kastner – 7013 2630 0001 5557 9156  
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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, 5<sup>th</sup> Floor  
Irvine, CA 92614-7321

**Regular Mail:**

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

Office of the Secretary, Interior

§4.310

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.

**§4.308 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.

**§4.306 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.

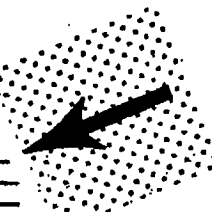
**GENERAL RULES APPLICABLE TO PROCEEDINGS ON APPEAL BEFORE THE INTERIOR BOARD OF INDIAN APPEALS**

SOURCE: 66 FR 67856, 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



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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

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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 67666, 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

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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

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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: 64 FR 6487, Feb. 10, 1999, 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 Quincey 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.

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(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

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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 §4.390(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

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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 61868, 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 100-158 (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 administrative 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 61868, Dec. 3, 1991; 56 FR 65782, Dec. 18, 1991, as amended at 64 FR 13368, 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: