United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
801 NORTH QUINCY STREET
SUITE 300
ARLINGTON, VA 22203

COUNTY OF SANTA BARBARA, CALIFORNIA; NO MORE SLOTS; AND PRESERVATION OF LOS OLIVOS, Appellants,	)	Order Dismissing Appeals in Docket Nos. 16-053 and 16-054, and Vacating Decision and Remanding
v.	)	Docket Nos. IBIA 16-051 16-053 16-054
PACIFIC REGIONAL DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellee.	)	May 15, 2018

The County of Santa Barbara, California (County); No More Slots (NMS); and Preservation of Los Olivos (POLO) (collectively, Appellants) appealed to the Board of Indian Appeals (Board) from a February 16, 2016, Notice of Decision (Decision) of the Pacific Regional Director (Regional Director), Bureau of Indian Affairs (BIA), to accept several parcels of land located in an unincorporated area of Santa Barbara County, California, in trust for the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California (Tribe).[1] The parcels total approximately 2.13 acres and are collectively referred to as the Mooney-Escobar Parcel.[2] The Tribe proposes no change to its current uses of the lands, which include ornamental landscaping.

As a threshold issue, the Regional Director and the Tribe argue that the County has not shown it has standing to challenge BIA's compliance with the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4321 *et seq.* The Regional Director and the Tribe also argue that NMS and POLO have failed to show they have standing to bring any of their claims. In addition, the Regional Director and the Tribe object to motions by the

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[1] The Board previously dismissed an appeal by other appellants as untimely. *See Geyser v. Pacific Regional Director*, 63 IBIA 299 (2016).

[2] The Mooney-Escobar Parcel includes the Mooney property (Assessor Parcel Nos. 143-242-01 and 143-242-02) and the Escobar property (Assessor Parcel Nos. 143-252-01 and 143-252-02). The legal description of the Mooney-Escobar Parcel is provided in the Decision.

County to supplement BIA's administrative record with a copy of the County's comments on the fee-to-trust application, which BIA contends it did not receive in the mail, and for the Board to take official notice of certain other documents.[3]

We are not convinced that the County has demonstrated standing to bring its NEPA claim. Even were we to assume that the County has standing to bring that claim, we would reject the claim on the merits, as discussed below. Aside from the County's NEPA-related concerns, it is undisputed that the County has standing to challenge BIA's compliance with the fee-to-trust regulations in 25 C.F.R. Part 151. We conclude that NMS and POLO have not demonstrated standing, and dismiss their appeals. NMS and POLO erroneously claim that they are not required to show that they have standing as organizations to pursue an appeal before the Board. Contrary to what NMS argues, an organization must demonstrate, among other things, that at least one of its members would have standing to sue. And, contrary to the position of POLO, neither its inclusion on BIA's mailing list of the Decision, nor the legal requirement to exhaust administrative remedies before seeking Federal court review, nor its participation in Federal court litigation over other another trust acquisition for the Tribe automatically confers standing in this appeal. Because they fail to establish standing, the Board dismisses the appeal by NMS in Docket No. IBIA 16-053 and the appeal by POLO in Docket No. IBIA 16-054.

Turning to the merits of the County's appeal, when making a discretionary decision whether to accept land into trust, BIA must consider, at a minimum, the criteria for on-reservation trust acquisitions in 25 C.F.R. § 151.10. While the County argues that the Regional Director failed properly to consider these criteria, with one exception, the County does not meet its burden of proof. Assuming that only the criteria in § 151.10 apply to this acquisition, we vacate the Regional Director's decision for failure properly to consider, under § 151.10(g), whether BIA is equipped to discharge the additional responsibilities

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[3] We deny the County's motion to supplement BIA's administrative record, because the County does not provide sufficient corroboration that it timely mailed its comments on the fee-to-trust application as it claims, and BIA asserts that it did not receive the comments prior to issuing the Decision. On the other hand, because the Regional Director and the Tribe have responded to the comments in this appeal, we have considered them as part of the appeal record, and we find that the County's comments are largely duplicative of other comments considered by BIA. With respect to the County's request to take official notice of several other documents, because the Regional Director does not object to our consideration of two of the documents, two additional documents are found in the administrative record, and the Regional Director and the Tribe have responded to all of the documents, we consider the documents to the extent they are relevant to the issues on appeal concerning the merits of the Decision.

that would result from the acquisition. The Regional Director appears to have relied, at least in part, on an assumption that emergency services to the Mooney-Escobar Parcel would be provided by local fire and police departments through intergovernmental agreements. According to the County and the Tribe, the subject property is not presently included in the service area of the agreements.

Above all, the County also argues that the Regional Director erred in finding that the Mooney-Escobar Parcel is located "contiguous" to the Tribe's Reservation, and thus failed to consider additional criteria applicable to "off-reservation" acquisitions in 25 C.F.R. § 151.11. We conclude that the Regional Director's contiguity determination is not adequately explained or supported in the Decision or the administrative record. On remand, the Regional Director may determine that the Mooney-Escobar Parcel is "contiguous" to the Tribe's Reservation, based on supported conclusions, or she may consider this acquisition pursuant to the criteria in § 151.11 for off-reservation acquisitions.

With respect to the merits of the County's NEPA claim, we conclude that the County fails to show that the Regional Director improperly relied on a categorical exclusion for acquisitions of land in trust where no change of land use is planned.

Statutory and Regulatory Background

The Regional Director approved the acquisition under Section 5 of the Indian Reorganization Act of 1934 (IRA), 25 U.S.C. § 5108 (formerly § 465), which authorizes the Secretary of the Interior (Secretary) to acquire land in trust for Indians in the Secretary's discretion. Under the 25 C.F.R. Part 151 regulations establishing the Department's land acquisition policy, land may be acquired in trust status for a tribe:

> (1) When the property is located within the exterior boundaries of the tribe's reservation or adjacent thereto, or within a tribal consolidation area; or
> (2) When the tribe already owns an interest in the land; or
> (3) When the Secretary determines that the acquisition of the land is necessary to facilitate tribal self-determination, economic development, or Indian housing.

25 C.F.R. § 151.3(a)(1)-(3).

When evaluating tribal requests to acquire land located within or "contiguous" to an Indian reservation, BIA must consider the following regulatory criteria in § 151.10:

(a) The existence of statutory authority for the acquisition and any limitations contained in such authority;
(b) The need of the . . . tribe for additional land;
(c) The purposes for which the land will be used;
(d) [. . .];
(e) If the land to be acquired is in unrestricted fee status, the impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls;
(f) Jurisdictional problems and potential conflicts of land use which may arise; and
(g) If the land to be acquired is in fee status, whether the [BIA] is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status[;]
(h) The extent to which the applicant has provided information that allows the Secretary to comply with 516 DM [Departmental Manual] 6, appendix 4, [NEPA] Revised Implementing Procedures, and 602 DM 2, Land Acquisitions: Hazardous Substances Determinations.

Id. § 151.10(a)-(c) and (e)-(h).[4] The term "contiguous" is not defined in 25 C.F.R. Part 151.

Where the land is located outside of and noncontiguous to an "Indian reservation," as that term is defined in § 151.2(f), BIA applies the same criteria above. *See id.* § 151.11(a) (incorporating § 151.10(a)-(c) and (e)-(h)). In addition, as the distance between the tribe's reservation and the land to be acquired increases, BIA must give greater scrutiny to the tribe's justification of anticipated benefits from the acquisition and must give greater weight to concerns raised by state and local governments. *Id.* § 151.11(b). And, if the land is being acquired for business purposes, the tribe must provide a plan that specifies the anticipated economic benefits associated with the proposed use. *Id.* § 151.11(c).

In addition to the applicable on- or off-reservation Part 151 regulations, BIA must also comply with NEPA, by conducting either a categorical exclusion determination (CE); an environmental assessment (EA) and a finding of no significant impact (FONSI); or an environmental impact statement (EIS), as applicable to the proposed action. *See* 40 C.F.R. § 1501.4.

[4] Criterion § 151.10(d) is applicable only to acquisitions for individual Indians.

Factual and Procedural Background

In 2014, the Tribe applied to BIA to place the Mooney-Escobar Parcel into trust. Application for Transfer of Title for Fee Lands into Trust, Sept. 2014 (Application) (Administrative Record (AR) Realty 2).[5] The Mooney-Escobar Parcel consists of the Mooney property and the Escobar property, which are owned by the Tribe in fee and together total approximately 2.13 acres. *Id.* at 4, 7; Decision, Feb. 16, 2016, at 1-4 (AR Realty 27). A Tribal resolution included with the application stated that the Mooney-Escobar Parcel is used for "landscaping, existing parking lots and road and utility easements and no change in use is planned." Resolution No. 951, Sept. 10, 2014, at 1 (Application, Exhibit (Ex.) B) (AR Realty 2); *see also* Categorical Exclusion Exception Review, Jan. 27, 2016, at 1 (CE) (AR NEPA 2016-1-27) ("The subject property is primarily developed as a paved and landscaped casino access road. Existing landscaping/maintenance buildings are also located on a portion of the subject property."). In its application, the Tribe reiterated that it "has no plans to change the uses of the properties," and stated that by placing the Mooney-Escobar Parcel into trust the Tribe would be able to irrigate the landscaping on the property with recycled water from its wastewater treatment plant instead of continuing to use potable water. Application at 9. The Tribe further described the purpose of the acquisition as to "maintain such uses under the jurisdiction of the Tribe and for future long[-]range planning, including the ability to use its resources in a more environmentally proactive way," and to "enhance the Tribe's land base, which supports tribal self-determination." *Id.*

The Tribe described the subject parcels as "adjacent to Highway 246 which runs along the Santa Ynez Reservation," and as "contiguous to each other and the Reservation." *Id.* at 4; *see id.*, Ex. A (Map depicting the Mooney-Escobar Parcel lying north of certain Tribal trust property[6] and lying south of State Highway 246 and other Tribal trust property). In addition to the Mooney-Escobar Parcel being separated from Tribal trust property by one or more roads or rights-of-way, the Mooney property itself is separated from the Escobar property, which lies to the east, by Sanja Cota Avenue. *See id.*, Ex. A.

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[5] BIA submitted the administrative record in two electronic folders containing Adobe PDF® "Realty" and "Environmental" documents, respectively. The Realty documents are consecutively numbered while the Environmental documents are listed by date. In our citations to the administrative record we use these conventions: AR Realty # and AR NEPA Year-Month-Day. We cite to the original page number of the document (at #) unless we note that the citation is to the PDF page number (at PDF #).

[6] As discussed *infra*, a County road right-of-way (Valley Street, which has not been physically opened) lies between the Mooney-Escobar Parcel and the Tribal trust property to the south.

On August 12, 2015, BIA issued written notice to state and local governments, including the County, and to POLO and other known interested parties, of the Tribe's application. *See* Notice of (Non-Gaming) Land Acquisition Application, Aug. 12, 2015 (Notice) (AR Realty 10). Because the original notice omitted part of the legal description of the properties, on August 24, 2015, BIA sent a supplemental notice with a corrected legal description to the recipients of the original notice. *See* Supplemental Notice of (Non-Gaming) Land Acquisition Application, Aug. 24, 2015 (Supplemental Notice) (AR Realty 13). The initial and supplemental notices stated that the Mooney-Escobar Parcel is "adjacent to [H]ighway 246 which runs along the Santa Ynez Reservation and is contiguous to the Reservation." Notice at 2; Supplemental Notice at 5.

The notices solicited information from the County and other government entities regarding property taxes, special assessments, government services, and zoning pertinent to acquisition of the Mooney-Escobar Parcel in trust. Notice at 1; Supplemental Notice at 1. Each of the notices advised that "written comments should be addressed to the Bureau of Indian Affairs at the address at the top of this notice. Any comments received within thirty days of your receipt of this notice will be considered and made a part of our record." Notice at 3; Supplemental Notice at 5; *see also* 25 C.F.R. § 151.10 ("The notice will inform the state or local government that each will be given 30 days in which to provide written comments . . . ."). At the top of each notice, BIA listed the mailing address for its Pacific Regional Office. *See* Notice at 1; Supplemental Notice at 1.

POLO submitted comments on the application by letter mailed to BIA. Letter from Williams to Regional Director, Sept. 29, 2015 (POLO Comments) (AR Realty 21). James E. Marino, Esq. (Marino), who represents NMS in this appeal, also submitted comments to BIA by mail. Letter from Marino to Regional Director, Oct. 12, 2015 (Marino Comments) (AR Realty 23). Although on appeal the County claims that it timely submitted comments to the Pacific Regional Office by mail, the Regional Director disputes the sufficiency of the evidence to support the County's claim and contends that the Pacific Regional Office did not receive the comments.

On February 16, 2016, the Regional Director issued the Decision approving the Tribe's application. She concluded that the proposed trust acquisition is authorized by Section 5 of the IRA, 25 U.S.C. § 5108 (formerly § 465). Decision at 4-5. The Regional Director also determined that the acquisition falls within the land acquisition policy set forth in 25 C.F.R. § 151.3(a). *Id.* at 4. Next, she found that the trust acquisition is subject to the criteria in § 151.10 for acquisitions of land located within or contiguous to the Tribe's Reservation, explaining that the Mooney-Escobar Parcel is "adjacent to [H]ighway 246 which runs along the Santa Ynez Reservation and is contiguous to the Reservation." *Id.* at 4; *cf. id.* at 8 (stating that the land on which the Tribe's gaming facility is located, Tract No. T5061, is held in trust for the Tribe and, "[w]ith that said, the proposed property

of 2.13 acres is contiguous to the Reservation"). In doing so, she asserted, without citing any regulation in 25 C.F.R. Part 151 or other authority, that "[t]he Department defined 'contiguous' as two parcels of land having a common boundary *notwithstanding the existence of* non-navigable waters or *a public road or right-of-way* and includes parcels that touch at a point." *Id.* at 8 (emphases added) (internal quotation marks omitted). The Regional Director also discussed the comments submitted by POLO and Marino, and the Tribe's responses to those comments. *Id.* at 5-9; *see* 25 C.F.R. § 151.10 ("a copy of the comments will be provided to the applicant, who will be given a reasonable time in which to reply").

The Regional Director then considered each of the factors in 25 C.F.R. § 151.10 for acquisition of land located within or contiguous to the Tribe's Reservation, *see* Decision at 9-14, which analysis we discuss further *infra*. She did not address the additional factors of 25 C.F.R. § 151.11(b) and (c) for acquisition of land that is noncontiguous to the Tribe's Reservation. The Regional Director next discussed BIA's compliance with NEPA. *Id.* at 8-9, 14. The Regional Director noted that POLO and Marino had commented that BIA should assess the cumulative impacts of all of the Tribe's pending fee-to-trust applications. *Id.* at 8; *see* POLO Comments at 2; Marino Comments at PDF 3. The Regional Director stated that she had approved a CE for the proposed acquisition of the Mooney-Escobar Parcel on January 27, 2016, based on the absence of a planned change in land use for the parcel.[7] Decision at 8-9, 14; *see* CE; 516 DM 10.5(I) (CE for "*Land Conveyances and Other Transfers*. Approvals or grants of conveyances and other transfers of interests in land where no change in land use is planned."). She concluded that no "extraordinary circumstances"[8] were present that would preclude use of the CE and warrant the preparation of an EA or EIS. Decision at 8-9, 14; CE at PDF 3. The CE finds that the acquisition of the Mooney-Escobar Parcel is not "related to other actions with individually insignificant but cumulatively significant environmental effects." CE at PDF 1. In both the CE and the Decision, the Regional Director noted that a 6.9-acre property had recently been taken into trust for the Tribe for recreational, educational, and commercial purposes, and that the Tribe had submitted another application to place approximately 1,400 acres known as the "Camp 4" property into trust for residential purposes.[9] CE at PDF 3; Decision at 8. The

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[7] Certain activities may be categorically excluded from the requirement to prepare an EA or EIS. *See* 40 C.F.R. § 1508.4; 43 C.F.R. §§ 46.205, 46.210. The DM restricts the application of categorical exclusions to BIA activities that are "single, independent actions not associated with a larger, existing or proposed, complex or facility." 516 DM 10.5.

[8] *See* 43 C.F.R. § 46.215 (Categorical exclusions: Extraordinary circumstances).

[9] The Board takes official notice, *see* 43 C.F.R. § 4.24(b), of its records of other proceedings before the Board that, in early 2017, the Department acquired title to approximately 1,427.28 acres, i.e., Camp 4, in trust for the Tribe. Jurisdiction over an

(continued...)

Regional Director stated that "[n]o significant impacts, cumulative or otherwise[,] were found to result from the 6.9-acre or 1400-acre acquisitions." CE at PDF 3; Decision at 8. She concluded that, because the proposed trust acquisition of the Mooney-Escobar Parcel would not involve a change in land use, the acquisition "would . . . not result in environmental impacts" and "would not contribute to significant environmental effects." Decision at 9. She also noted that the Tribe had obtained a permit from the regional water quality control board and commenced recycled water irrigation on the property. *Id.*; *see also* CE at PDF 1, 3; Email from Hodge to Lowe, Jan. 27, 2016 (AR NEPA 2016-1-27); Letter from Central Coast Regional Water Quality Control Board to Tribe, Aug. 6, 2015 (AR NEPA 2015-8-6).

Appellants appealed the Decision to the Board. Each appellant filed an opening brief. In conjunction with its brief, the County also filed a motion to supplement BIA's administrative record with its September 23, 2015, comment letter on the proposed trust acquisition, and a request for the Board to take official notice of various other documents. The Regional Director and the Tribe each filed consolidated answer briefs and objected to the County's motions.[10] Each appellant also filed a consolidated reply brief.

Discussion

I. Standing

In order to have a right to appeal to the Board, an appellant must demonstrate that it has standing. *See* 25 C.F.R. § 2.2 (definitions of "Appellant" and "Interested party"); 43 C.F.R. § 4.331 (Who may appeal); *Dillenburg v. Midwest Regional Director*, 63 IBIA 56, 60 (2016); *Preservation of Los Olivos (POLO) v. Pacific Regional Director*, 58 IBIA 278, 296-97 (2014). An appellant must be able to show standing for each claim that it seeks the Board to consider. *Thompson v. Great Plains Regional Director*, 58 IBIA 240, 241 (2014); *County of Sauk, Wisconsin v. Midwest Regional Director*, 45 IBIA 201, 218 (2007), *aff'd sub nom. Sauk County v. U.S. Dep't of the Interior*, No. 07-543, 2008 WL 2225680 (W.D. Wis. May 29, 2008). To evaluate standing, the Board applies the elements of constitutional standing articulated by the United States Supreme Court in *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). *See POLO*, 58 IBIA at 292, 296-97. An appellant must

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appeal to the Board from that decision was assumed by the Acting Assistant Secretary – Indian Affairs under 25 C.F.R. § 2.20(c), and he dismissed the appeal. *See Kramer v. Principal Deputy Assistant Secretary – Indian Affairs* (no IBIA docket number assigned).

[10] The Regional Director also requested leave to file a sur-reply if Appellants provided new evidence concerning standing. We find a sur-reply unwarranted.

demonstrate that: (1) it has suffered an actual or imminent, concrete and particularized injury to or invasion of a legally protected interest; (2) the injury is causally connected with or fairly traceable to the challenged action; and (3) the injury will likely be redressed by a favorable decision. *See Lujan*, 504 U.S. at 560-61; *POLO*, 58 IBIA at 296-97. In asserting a procedural injury under NEPA, the foregoing standards are relaxed: An appellant may prosecute its NEPA claim "without meeting all the normal standards for redressability and immediacy." *Arizona State Land Dep't v. Western Regional Director*, 43 IBIA 158, 169 n.14 (2006) (emphasis omitted) (quoting *Lujan*, 504 U.S. at 573 n.7).

In addition to the above constitutional elements of standing, the Board also adheres to principles of prudential standing: An appellant must show that "the interest sought to be protected . . . is arguably within the zone of interests to be protected or regulated by the statute . . . in question." *Assoc. of Data Processing Serv. Orgs., Inc. v. Camp*, 397 U.S. 150, 153 (1970); *see POLO*, 58 IBIA at 297-98; *County of Sauk*, 45 IBIA at 219. The zone of interest test, however, is "not meant to be especially demanding." *Clarke v. Sec. Indus. Assoc.*, 479 U.S. 388, 399 (1987). A party not the subject of agency action is outside the zone of interests only if its interests are "so marginally related to or inconsistent with the purposes implicit in the statute that it cannot reasonably be assumed that Congress intended to permit the suit." *Id.*

A. Whether the County Has Standing to Bring Its NEPA Claim

The County asserts that it has standing to raise a procedural violation of NEPA that BIA "has attempted to fit this acquisition within a categorical exclusion by segmenting it from a larger proposed action into pieces to avoid environmental review, [and] . . . has ignored the extraordinary circumstances precluding a CE" and requiring an EA or EIS. County's Opening Brief (Br.), Oct. 11, 2016, at 16; *see id.* at 5-6, 15-22; County's Reply Br., Jan. 6, 2017, at 2-10. According to the County,

> despite the lack of a change in use for the [Mooney-Escobar Parcel], the acquisition still represents removal of the property from the County's tax rolls and regulatory jurisdiction and is significant in the context of the impacts of the related actions. The cumulative impacts of this removal and other related actions in the area significantly impact land use resources, public services, including the loss of tax revenue to fund them, regulatory planning, and the public health and safety in the area regardless of any changes in uses on the [Mooney-Escobar Parcel].

County's Opening Br. at 20; *see* County's Reply Br. at 9. The County contends that the proposed acquisition of the Mooney-Escobar Parcel is related to the earlier 6.9-acre acquisition that was completed, and the approximately 1,400-acre acquisition that was

pending, at the time of the Decision. *See* County's Opening Br. at 19. The County also suggests that BIA should consider, in a cumulative impact analysis, possible future trust applications by the Tribe, noting that the Tribe owns several other properties in fee. *See id.* at 17. In addition, the County argues that the Mooney-Escobar Parcel is adjacent to or near County roads and proposed bicycle and pedestrian trails, and contains parts of Zanja de Cota Creek, a sensitive biological resource, all of which the County asserts without explanation "could be" impacted by the trust acquisition. County's Opening Br. at 5-6, 21; County's Reply Br. at 6-7, 9.

The Regional Director and the Tribe argue that the County lacks standing to pursue its challenge to BIA's compliance with NEPA. *See* Regional Director's Answer Br., Dec. 9, 2016, at 13-14; Tribe's Answer Br., Dec. 9, 2016, at 18-23. The Regional Director and the Tribe argue that the only concrete injuries the County has identified that are caused by the acquisition are loss of jurisdiction and tax revenue. Regional Director's Answer Br. at 13; Tribe's Answer Br. at 20. They argue that the County has not addressed how taking title to the Mooney-Escobar Parcel into trust, with no proposed change in land use, would cause an injury to the County's environmental interests. Tribe's Answer Br. at 20; *see also* Regional Director's Answer Br. at 13. To the extent the County has alleged environmental injuries, they contend, those alleged injuries are speculative and generalized. Regional Director's Answer Br. at 13-14; Tribe's Answer Br. at 20. They also argue that, even if the County meets the injury-in-fact, causation, and redressability elements of constitutional standing, the County's alleged jurisdictional and economic injuries do not fall within the zone of interests that NEPA is designed to protect, and thus the County has not shown it has prudential standing. Regional Director's Answer Br. at 13-14; Tribe's Answer Br. at 20-23.

The Regional Director and the Tribe rely on *County of Sauk*, 45 IBIA at 218-20, where we held that the appellant county lacked standing to bring a NEPA claim that BIA had failed to apply a cumulative impact analysis that included acquisition of the tribe's remaining fee lands in trust. Finding that the appellant's only alleged injuries were the deprivation of revenue and jurisdiction, we explained that neither the cumulative impact analysis nor NEPA was designed to protect the appellant from any deprivation of revenue; that the appellant had not shown that its loss of governmental jurisdiction, standing alone, was within the zone of interests that NEPA was designed to protect; and that the appellant had failed to identify any environmental injury that would allegedly result from its loss of jurisdiction over the parcel, regardless of whether the acquisition was treated as an isolated acquisition or as part of the tribe's total fee holdings in the county. *Id.* at 219-20. We noted that the county had asserted jurisdiction over various interests that NEPA is arguably intended to protect, e.g., floodplain zoning, shoreland zoning, and enforcement of the state sewage code, but found that it did not allege that removal of the land from the county's

jurisdiction "will have any actual effect on these or any environmental interests that it regulates." *Id.* at 220.

The County argues that *County of Sauk* is distinguishable on the grounds that it involved an EA and FONSI, and that the County has alleged environmental injuries. *See* County's Reply Br. at 10. But in that case, as here, the procedural violation asserted by the appellant was the absence of a cumulative impact analysis involving other potential trust acquisitions. And although the County has generally asserted, among other things, that the public health and safety, County property, proposed trails, and Zanja de Cota Creek could be affected by the trust acquisition, and thus has identified environmental concerns like the appellant in *County of Sauk*, the County presents no information about any specific injury that would occur or how it would affect, e.g., Zanja de Cota Creek. *See County of Sauk*, 45 IBIA at 220. Therefore, we are not convinced that the County has demonstrated injury-in-fact. *See id.*; *Arizona State Land Dep't*, 43 IBIA at 168-69 (finding speculative and generalized allegations of environmental injury resulting from removal of state and local regulatory jurisdiction insufficient to demonstrate injury-in-fact).

Moreover, even if the County's allegations were sufficient to show injury-in-fact, we are not persuaded the County has demonstrated that the second and third elements of standing, causation and redressability, are met. The County concedes that the Tribe's continuation of its existing uses of the Mooney-Escobar Parcel, which the record supports are consistent with local zoning and surrounding uses, is not dependent upon approval of the trust acquisition. As we noted as background, prior to the Decision the Tribe was granted a regional water quality control board permit and the Tribe commenced recycled water irrigation on the Mooney-Escobar Parcel. In the context of disputing the Tribe's need for the trust acquisition, the County argues that "the Tribe does not need to have the Properties taken into trust to meet its stated needs and doing so will not change the fact that it is subject to regulation with respect to recycled water use on its Properties."[11] County's Opening Br. at 10. Because the Tribe's use of the Mooney-Escobar Parcel for landscaping and other existing uses is not dependent on the land's trust status, the County has not shown a causal connection between the Decision and any alleged environmental injury, nor that the injury would be redressed by a favorable Board decision. *See Citizens for Safety and Environment v. Acting Northwest Regional Director*, 40 IBIA 87, 93-94 (2004) (appellants lacked standing because the tribe's land use was not dependent on trust status and there was no showing that the tribe would discontinue its use if the land were not taken

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[11] The CE explains that acquisition of these lands in trust would transfer primary jurisdiction regarding Federal Clean Water Act compliance from the California State Water Board to the U.S. Environmental Protection Agency, which permits the Tribe's existing wastewater treatment plant. CE at PDF 3.

into trust); *Evitt v. Acting Pacific Regional Director*, 38 IBIA 77, 82-83 (2002) (appellants failed to show that a decision not to take property in trust would prevent tribe's intended use of the land). But even were we to assume that the County has standing to bring its NEPA claim, we would conclude, for reasons discussed *infra*, that its allegations are insufficient to demonstrate error. *See State of New York v. Acting Eastern Regional Director*, 58 IBIA 323, 352 n.37 (2014) (assuming the appellants had standing, their speculative allegations of environmental consequences were insufficient to demonstrate error in BIA's use of a CE based on no change in land use).

B. Whether NMS and POLO Have Standing to Bring Any of Their Claims

The Regional Director and the Tribe next challenge NMS's and POLO's standing to bring any of their claims. Regional Director's Answer Br. at 10-12; Tribe's Answer Br. at 11-21. In addition to the constitutional and prudential standing requirements discussed above, where the appellant is an organization that claims to have standing to sue on behalf of its members, it must show that (1) its members would have standing to sue in their own right, (2) the interests it seeks to protect are germane to the organization's purpose, and (3) the issues to be resolved do not require the individual participation of the members. *See Friends of the Earth, Inc. v. Laidlaw Envtl. Serv.*, 528 U.S. 167, 181 (2000); *Hunt v. Washington Apple Adver. Comm'n*, 432 U.S. 333, 343 (1977); *POLO*, 58 IBIA at 282 n.6, 304-05.

The Regional Director and the Tribe argue that neither NMS nor POLO has identified any injury-in-fact that would result from the trust acquisition, or shown that the interests of its members, implicated by the trust acquisition, are germane to its organizational purpose. Regional Director's Answer Br. at 10-12; Tribe's Answer Br. at 12-14. The Tribe also argues that all of NMS's claims and most of POLO's claims are outside the scope of the appeal or outside the Board's jurisdiction and not redressable by the Board. Tribe's Answer Br. at 14-18. For the following reasons, we conclude that NMS and POLO lack standing and dismiss their appeals.

NMS describes itself as "an unincorporated association of Valley residents an[d] citizens of the Santa Ynez Valley concerned with the expansion of gambling activities of the Santa Ynez [B]and of Mission Indians, particularly those activities that are in violation of the laws and rules required by the [Indian Gaming Regulatory Act (IGRA), 25 U.S.C. § 2701 *et seq.*]." NMS's Reply Br., Jan. 9, 2017, at 14. In response to the Regional Director's and Tribe's arguments that it lacks standing, NMS argues in large part that it has standing to assert that the real purpose of the trust acquisition is for gaming, "particularly when the Band has produced no evidence the entire parcel of land is illegible [sic] for gaming." *Id.* at 17. According to NMS, the Tribe's nearby casino is in violation of IGRA. *See id.* NMS argues that it need not show that any of its members would have standing to

sue in his or her own right, asserting that "[n]o specific showing of individualized damages need to be demonstrated . . . to have standing to challenge such illegal gaming activity or the failure of the Department of the Interior to enforce the law." *Id.* at 16-17.

NMS's allegation, which is also made by POLO, that the Tribe intends to use the Mooney-Escobar Parcel for gaming, was not raised to the Regional Director and is therefore outside the scope of the appeal.[12] *See* 43 C.F.R. § 4.318 (Scope of review); *Thurston County, Nebraska v. Acting Great Plains Regional Director*, 56 IBIA 62, 66, 75 n.15 (2012). But even were we to consider this allegation, we would conclude that it is too speculative and conjectural to establish injury-in-fact.[13] *See Arizona State Land Dep't*, 43 IBIA at 167. Also, contrary to NMS's apparent position, it is insufficient merely to allege a violation of law (IGRA) pertinent to the organization's purpose (preventing the expansion of gaming) without demonstrating satisfaction of the judicial elements of standing. Moreover, IGRA does not, by its terms, restrict trust acquisition of land; it simply prohibits gaming on certain lands acquired in trust after October 17, 1988. 25 U.S.C. § 2719(c) ("Nothing in this section shall affect or diminish the authority and responsibility of the Secretary to take land into trust."); *POLO*, 58 IBIA at 308.

Further, when an organization brings an action on behalf of its members, at least one of the organization's members must be able to satisfy the standing requirements to sue in his or her own right. *See POLO*, 58 IBIA at 282 n.6; *see also Citizens for Safety and Environment*, 40 IBIA at 93 (noting that the appellant organization "d[id] not name even one member whose legally-protected interest would be invaded"). NMS has provided no declarations or other evidence to show that any of its members has standing. *See POLO*, 58 IBIA at 296 n.18 (explaining that "[w]hile no ultimate showing of proof need be made before an appeal may proceed, the Board has required evidence, such as . . . declarations . . . , to support allegations of injury"). Thus, NMS has not established standing.

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[12] No party previously disputed BIA's description of the Tribe's application as a "(Non-Gaming) Land Acquisition Application."

[13] And even if we were to assume that NMS and POLO have standing, we would reject the allegation on the merits as based on speculation. *See POLO*, 58 IBIA at 307-08 ("Even if gaming on the [p]arcel might be lawful, BIA is only required to consider a tribe's intended uses of property it seeks to have taken into trust, not all lawful purposes for which a property could be used."); *Village of Hobart, Wisconsin v. Midwest Regional Director*, 57 IBIA 4, 27 n.30 (2013) ("it is well established that the Regional Director is not required to engage in speculation concerning future uses to which the lands may be put"). On appeal, the Tribe reiterates that it does not plan to modify the existing casino access road on the Mooney-Escobar Parcel, built under County permits, or otherwise change the current uses of the property. *See* Tribe's Answer Br. at 17.

Turning to POLO, it also seeks to avoid its burden to demonstrate standing. POLO asserts that it has standing on grounds that (1) BIA mailed POLO a certified copy of the Decision as an "interested party" and thus BIA is "estopped" from raising the issue; (2) POLO was required to appeal the Decision to the Board before seeking Federal court review, and this exhaustion requirement "automatically confers" standing; and (3) POLO was found to have standing in prior Federal court litigation involving a different fee-to-trust request, and that decision is "binding" here. POLO's Reply Br., Jan. 9, 2017, at 12-13; POLO's Opening Br., Dec. 11, 2016, at 27. We reject these arguments in turn and conclude that POLO has not otherwise demonstrated standing.

First, to the extent that POLO is an "interested party," which is "any person whose interests could be adversely affected by a decision in an appeal," 25 C.F.R. § 2.2, this does not demonstrate standing to bring an appeal. *See POLO*, 58 IBIA at 296-97 (analyzing 25 C.F.R. § 2.2 and 43 C.F.R. § 4.331 (Who may appeal), and explaining that, in order for an "interested party" to bring an "appeal," i.e., be an appellant, he or she must satisfy the judicial elements of standing). Moreover, we have previously held that whether or not BIA refers to potentially affected individuals as "interested parties" for purposes of issuing notice of a decision, and includes standard language concerning appeal rights, "is not a determination that any particular recipient of a decision has legal standing to appeal the decision, and certainly does not create a substantive underlying legally-protected interest where none existed previously." *Hall v. Great Plains Regional Director*, 43 IBIA 39, 45-46 (2006).

Second, the requirement to exhaust administrative remedies by filing an appeal with the Board prior to seeking judicial review does not confer administrative standing where it does otherwise exist. *See generally Kamb v. Acting Northwest Regional Director*, 52 IBIA 74, 84 (2010) ("The purpose of requiring exhaustion . . . is . . . 'to enable the parties to develop a complete record, including the resolution of any factual disputes.'" (quoting *Weinberger v. Rocky Mountain Regional Director*, 46 IBIA 167, 173 (2008))); *Skagit County, Washington v. Northwest Regional Director*, 43 IBIA 62, 76 (2006) ("[t]he doctrine of exhaustion . . . requires that the agency have the first opportunity to adjudicate a claim, but this does not necessarily mean that the agency must adjudicate the claim on the merits").

Third, POLO's participation in prior Federal court litigation over a different trust acquisition for the Tribe, *see* POLO's Reply Br. at 12 (citing *Preservation of Los Olivos v. U.S. Dep't of the Interior*, 635 F. Supp. 2d 1076 (C.D. Cal. 2008)), does not demonstrate standing to pursue this appeal before the Board. The District Court in that case concluded only that POLO had standing to seek judicial review of the Board's decision that POLO lacked standing to appeal from BIA's decision. *See* 635 F. Supp. 2d at 1085-89. The District Court did not decide whether POLO had standing to seek administrative review of BIA's decision; the Court remanded the issue to the Board for further consideration. *See id.*

at 1096. On remand, the Board again concluded that POLO lacked standing, explaining that POLO had failed to show that the interests of its member-declarants were germane to POLO as an organization. *See POLO*, 58 IBIA at 305.

In this appeal, POLO, like NMS, has not submitted declarations of any members alleging injury-in-fact resulting from the trust acquisition, much less has POLO shown that the interests of its members that it seeks to protect are germane to it as an organization.[14] Thus, we conclude that POLO also falls short of demonstrating standing.[15]

II. County's Motion to Supplement and Request for Official Notice

As we explained as background, with its opening brief, the County filed a motion to supplement BIA's administrative record with its written comments on the Tribe's fee-to-trust application and a request for the Board take official notice under 43 C.F.R. § 4.24(b) of certain other documents. The Board previously granted these motions for the limited purpose of adding the comments and other documents to the Board's appeal record with the County's opening brief, without determining whether the materials are or should be part of BIA's administrative record or are properly considered by the Board in reviewing the Decision, and allowed the Regional Director and the Tribe to respond to the motions in their answer briefs.[16] We now rule on the motions in remaining part.

A. Motion to Supplement the Administrative Record

First, the County seeks to supplement BIA's administrative record with its September 23, 2015, comment letter prepared in response to BIA's notices of the application for trust acquisition. *See* County's Motion to Supplement the Administrative Record, Oct. 10, 2016 (Motion to Supplement); Letter from County Executive Officer to Regional Director, Sept. 23, 2015 (County's Comments) (Motion to Supplement, Ex. A).

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[14] We note that neither POLO's comments on the fee-to-trust application nor its briefs on appeal describe its organizational purpose. POLO's opening brief attaches joint comments by POLO and Preservation of Santa Ynez on a different fee-to-trust application, which only vaguely describe both groups as "citizen's groups formed to protect the character of the local area." Letter from Bowen to Superintendent, Sept. 24, 2005, at 1 (POLO's Opening Br., Ex. B).

[15] Because we dismiss NMS's and POLO's appeals on the grounds stated above, we do not find it necessary to consider the Tribe's remaining standing arguments.

[16] *See* Order Granting in Part Motion to Supplement Record and Request for Official Notice, Oct. 20, 2016.

The Regional Director and the Tribe object to the motion, contending that the County has not shown it timely mailed the comments in accordance with the notices as it claims, and that the Regional Director did not receive the comments in the mail. *See* Regional Director's Answer Br. at 65-77; Tribe's Answer Br. at 23-30. They also argue that the County's motion should be denied because it did not file a timely objection that the comments were in fact before the Regional Director and thus should have been included in the administrative record. *See* 43 C.F.R. § 4.336 (providing 15 days from receipt of the Board's notice of docketing to file objections to the record as constituted); Regional Director's Answer Br. at 71; Tribe's Answer Br. at 27-28. We deny the County's motion to supplement BIA's administrative record.

Upon receipt of an application to place lands into trust under discretionary acquisition authority, BIA will issue a "notice [that] will inform the state or local government that each will be given 30 days in which to provide written comments as to the acquisition's potential impacts on regulatory jurisdiction, real property taxes and special assessments." 25 C.F.R. § 151.10. BIA's initial August 12, 2015, and supplemental August 24, 2015, notices of the Tribe's fee-to-trust application advised that "written comments should be addressed to the Bureau of Indian Affairs at the address at the top of this notice. Any comments received within thirty days of your receipt of this notice will be considered and made a part of our record." Notice at 3; Supplemental Notice at 5. The top of each notice contained the following address information: "In Reply Refer to" "Bureau of Indian Affairs, Pacific Regional Office, 2800 Cottage Way, Sacramento, California 95825." Notice at 1; Supplemental Notice at 1.

According to the County's motion, within 30 days of receiving the supplemental notice,[17] "[o]n September 23, 2015, the County timely submitted comments on the [proposed acquisition] . . . to the Regional Director by electronic mail, and regular mail at the address provided in the NOA." Motion to Supplement at 2. The County asserts that it electronically copied the Tribe, County Board of Supervisors, and members of the California legislature on its email, and faxed its comments to members of Congress. *Id.* at 4. The County asserts that it "did not receive any electronic mail return notice or other failed delivery notice." *Id.* at 3.

In response to the County's motion, the Pacific Regional Office reviewed its log of all mail received during the time period between August 2, 2015, and February 16, 2016, and found "no receipt of any correspondence from the County in that period." Henningsen Declaration (Decl.) ¶¶ 7-8, Dec. 7, 2016 (Regional Director's Answer Br., Ex. A). The

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[17] The County states that it received the supplemental notice no earlier than August 28, 2015. *See* Motion to Supplement at 3.

Regional Director argues that the County has failed to provide corroboration that it timely mailed the comments to the address provided and that "it is irrelevant whether the County faxed or emailed courtesy copies of its comments to BIA-[Pacific Regional Office] or others." Regional Director's Answer Br. at 70.

We agree that the County fails to provide corroborating evidence that its comment letter was mailed to BIA's address provided in the notices. Although the County's motion alleges that it mailed the comments on September 23, 2015, the declaration on which the County's motion relies does not support that allegation, as it only states that it is the "usual practice" of the Executive Secretary to the County Executive Officer "to send the original signed letter via first class mail at or near the same time" she sends the email copy.[18] Wingerden Decl. ¶ 6, Oct. 10, 2016 (County's Motion to Supplement); *cf. Saguaro Chevrolet, Inc. v. Western Regional Director*, 43 IBIA 85, 89 (2006) ("a self-serving statement that an individual remembers preparing a notice of appeal and mailing it to the Board, without some corroboration, is insufficient to demonstrate that the notice of appeal was mailed to the Board"). Here, the County's declarant does not even allege any specific recollection of mailing the comments to the Pacific Regional Office, *see* Wingerden Decl. ¶¶ 5-7, and proof that the County emailed or faxed its comments to other entities is irrelevant to whether or not it mailed the comments to BIA as the County claims. Thus, we conclude that the County has not shown that it timely mailed its comments.

Also contrary to the County's arguments, 43 C.F.R. § 4.24(a)(4) does not support supplementation of BIA's administrative record, as distinguished from the appeal record. *See* Motion to Supplement at 5. Subsection 4.24(a)(4) provides that "no decision . . . on appeal shall be based upon any record, statement, file, or similar document which is not open to inspection by the parties to the . . . appeal, except for [confidential documents under § 4.31(d)]." Consistent with that regulation, and the Board's prior order granting the County's motion in part, the Board may allow parties to supplement the appeal record as long as opposing parties have the opportunity to respond, without creating any implication that the supplemental evidence should have been in BIA's administrative

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[18] The September 23, 2015, email to the Regional Director states that "[a] hard copy will be mailed." Email from Wingerden to Regional Director, Sept. 23, 2015 (Motion to Supplement, Ex. C). Although the County contends that the Regional Director incorrectly suggests that comments must be sent via "first class mail," County's Reply Br. at 13-14, it is clear that the Regional Director is simply responding to the County's arguments and is not purporting to limit the mode of submission to first class mail or even U.S. mail as opposed to, e.g., personal delivery to the address provided in the notices.

record.[19] But the County cannot invoke § 4.24(a)(4) as authority to add untimely comments, which BIA disclaims having received, to BIA's administrative record. *See* 43 C.F.R. § 4.335 (describing the contents of an administrative record); *see also Friends of Endangered Species, Inc. v. Jantzen*, 589 F. Supp. 113, 117 (N.D. Cal. 1984) (agency had no legal duty to consider untimely comments); *No Oilport! v. Carter*, 520 F. Supp. 334, 353 (W.D. Wash. 1981) (agency was not required to respond to untimely comments).

Further, even were we to find that the County timely emailed its comments to the Regional Director, the Regional Director does not acknowledge receipt of the email, nor are we convinced by the County's arguments that the Regional Director was required to consider comments sent only by email. Given the instructions on where to address comments, the County arguably bore the risk that sending its comments only by email would result in the comments not being considered by the Regional Director, even if they had been received by her. Although the County contends that it has previously sent comments to the Pacific Regional Office by mail and email "without any issue," Motion to Supplement at 3, the County identifies no prior instance in which it only emailed such comments and the comments were nonetheless considered. Thus, we deny the County's motion to supplement the administrative record.

On the other hand, the Regional Director and the Tribe have directly responded to the County's comments in this appeal. The Regional Director argues that the County has failed to show that "the particular concerns raised by the County's comments" were not considered. Regional Director's Answer Br. at 74. She argues that the comments submitted by Marino (or NMS) and POLO "duplicate the County's concerns," except as related to the loss of tax revenue, that she "gave due consideration to the comments that were timely received as well as to the issue of the County's loss of tax revenue," and that the County has not shown otherwise. *Id.* at 74-76; *see also* Tribe's Answer Br. at 28-30 (arguing that the comment letter itself states that the County "has not taken a formal position on the requested Trust Acquisition" and was simply providing the "information requested" by BIA, and that all of the issues raised were addressed in the Decision). The County argues that the issues are not duplicative, explaining that the concerns it raised with respect to the CE could not have been raised before the Regional Director, because the Decision announced BIA's approval of the CE. County's Reply Br. at 20. We consider the parties' arguments regarding the extent to which BIA has considered the issues raised in the County's comments, which concern the merits of the Regional Director's decision, *infra*.

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[19] Of course, if the BIA deciding official were to request supplementation, it would arguably be an admission that the documents should have been considered in reaching the decision.

B. Request for Official Notice

The County also requests that the Board take "official notice" of nine exhibits attached to its request. *See* County's Request for Official Notice, Oct. 11, 2016, at 2-4.[20] The County cites 43 C.F.R. § 4.24(b), which provides that "[o]fficial notice may be taken of the public records of the Department of the Interior and of any matter of which the courts may take judicial notice." The Regional Director does not object to the Board's consideration of the two intergovernmental agreements, *see* Regional Director's Answer Br. at 78, and accordingly we will consider those documents to the extent they are relevant to the issues on appeal. In addition, the Regional Director correctly notes that the two assessor's parcel maps are already contained in the administrative record, *see id.* at 78 & n.440 (citing AR NEPA 2014-09-22 at PDF 68, 351), which renders the County's request moot to the extent the County seeks our consideration of those documents.

With respect to the five remaining documents, the Regional Director and Tribe argue that the County could have, but did not, raise them to the Regional Director and thus they should not be considered by the Board. Regional Director's Answer Br. at 81; Tribe's Answer Br. at 30-31. Whether or not any of the nine additional documents meet the standard for taking official notice under § 4.24(b), as discussed *supra*, the Board may consider additional documents where, as here, the Regional Director and the Tribe have responded to them on appeal. *See* 43 C.F.R. § 4.24(a)(4). In their answer briefs, the Regional Director and the Tribe argue that the County fails to show the relevance or significance of the documents to the issues on appeal. Regional Director's Answer Br. at 78-81; Tribe's Answer Br. at 30-31. We consider these arguments *infra*. With respect both to the County's September 23, 2015, comment letter and the nine additional documents on which it relies on appeal, all of which we consider under § 4.24(a)(4), we agree that the

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[20] Exhibits 1 and 2 are intergovernmental agreements between the Tribe and County for the provision of fire services and between the Tribe and County Sheriff for law enforcement services for the Santa Ynez Reservation. Exhibits 3 and 4 are assessor's parcel maps associated with the Mooney-Escobar Parcel. Exhibit 5 is a September 2014 notice of approval by the Tribal Business Committee of an environmental evaluation concerning a project to expand and renovate the Tribe's existing casino and hotel "on reservation lands." Exhibit 6 is a cover page and excerpted pages from a 2009 document titled "Santa Ynez Valley Community Plan." Exhibit 7 is a one-page fact sheet issued by the City of Solvang Conference and Visitors Bureau. Exhibit 8 includes a cover page, table of contents, and single-page excerpt of a document titled "The City of Buellton. Bicycle and Pedestrian Master Plan. Final–January 2012." And Exhibit 9 consists of a cover page and three non-sequential pages from volume one of a 2009 multi-volume environmental report titled "Final Santa Ynez Valley Community Plan EIR."

County has not shown error by the Regional Director, apart from the two reasons for which we vacate and remand the Decision.

III. Merits

A. Standard of Review

In reviewing a trust acquisition decision, which involves the exercise of discretion delegated to BIA, the Board does not substitute its own judgment for that of BIA. *State of New York*, 58 IBIA at 329. The Board reviews discretionary decisions to determine whether proper consideration was given to all legal prerequisites to the exercise of that discretion, including any limitations on its discretion that may be established in regulations. *State of Kansas v. Acting Eastern Oklahoma Regional Director*, 62 IBIA 225, 233 (2016). An appellant bears the burden of showing that BIA did not properly exercise its discretion. *Id.*; *State of New York*, 58 IBIA at 329. Simple disagreement with or bare assertions concerning BIA's decisions are insufficient to carry an appellant's burden of proof. *Desert Water Agency v. Acting Pacific Regional Director*, 59 IBIA 119, 123 (2014).

The record must show that BIA considered the factors set forth in 25 C.F.R. Part 151, as applicable to the proposed acquisition. There is no requirement that BIA reach a particular conclusion with respect to each factor, or that the factors be "weighed or balanced in a particular way or exhaustively analyzed." *Shawano County, Wisconsin v. Acting Midwest Regional Director*, 53 IBIA 62, 69 (2011); *see County of Sauk*, 45 IBIA at 206-07. We must be able to discern from the decision, or at least from the record, that due consideration was given to timely submitted comments by interested parties. *State of New York*, 58 IBIA at 329; *Village of Hobart*, 57 IBIA at 13. The Board reviews legal issues and sufficiency-of-evidence issues *de novo*. *Picayune Rancheria of the Chukchansi Indians v. Pacific Regional Director*, 62 IBIA 103, 114 (2016). An appellant, however, bears the burden of proving that BIA's decision was in error or not supported by substantial evidence. *State of New York*, 58 IBIA at 330.

B. Regional Director's Consideration of the Part 151 Factors

On appeal, the County does not dispute the Regional Director's conclusion that Section 5 of the IRA applies to the Tribe, which voted to accept the provisions of the IRA in an election called and held by the Secretary of the Interior in 1934. *See* Decision at 5 n.1. Nor does the County dispute the Regional Director's finding that the acquisition satisfies the land acquisition policy under 25 C.F.R. § 151.3(a)(1)-(3) because the Mooney-Escobar Parcel is at least "adjacent" to the Tribe's Reservation, *see* § 151.3(a)(1), the Tribe owns the property in fee, *see* § 151.3(a)(2), and because the subsections are disjunctive, it is immaterial whether the acquisition is also "necessary to facilitate tribal self-determination,

economic development, or Indian housing," *see* § 151.3(a)(3). Regional Director's Answer Br. at 28, 43. The County argues that the Regional Director erred in concluding that the Mooney-Escobar Parcel is "contiguous" to the Tribe's Reservation and not subject to the off-reservation criteria in § 151.11. The County further argues that, even if the lands are subject only to the on-reservation criteria, the Regional Director failed adequately to consider § 151.10(b) (need), (c) (purpose), (e) (tax loss), (f) (jurisdictional problems and land use conflicts), and (g) (BIA's ability to discharge resulting additional responsibilities).

We conclude that the Regional Director adequately considered the factors in § 151.10(b), (c), (e), and (f), but vacate the Decision for failure properly to consider, under § 151.10(g), whether BIA is equipped to discharge the additional responsibilities that would result from the acquisition. Specifically, the Regional Director's consideration of § 151.10(g) appears to have relied, at least in part, on an erroneous finding that the Tribe has intergovernmental agreements for police and fire services for the Mooney-Escobar Parcel that would apply to the property after trust acquisition. Further, we conclude that the Regional Director's determination that the Mooney-Escobar Parcel is "contiguous" to the Tribe's Reservation, and thus only the on-reservation criteria apply, is not adequately supported in the Decision or the administrative record. Therefore, we vacate the Decision and remand the matter for further consideration. On remand, the Regional Director may determine that the Mooney-Escobar Parcel is contiguous to the Tribe's Reservation, based on supported conclusions, or she may consider this acquisition pursuant to the criteria in § 151.11.

1. Whether the Off-Reservation Criteria in § 151.11 Apply

The County argues that the Regional Director erred in concluding that the off-reservation criteria in § 151.11 do not apply to the Mooney-Escobar Parcel. County's Opening Br. at 13-15; County's Reply Br. at 20-22. The County contends that the Mooney property is separated from the Tribe's Reservation to the south by Sanja Cota Avenue, a public roadway, and Valley Street, a public right-of-way, and is separated from the Tribe's 6.9-acre trust property to the north by State Highway 246. County's Opening Br. at 13. The County also contends that the Escobar property is separated from the Tribe's Reservation to the west by Sanja Cota Avenue and the Mooney property, and is separated from the 6.9-acre trust property to the north by Highway 246. *Id.* We agree that the Regional Director's finding that the Mooney-Escobar Parcel is contiguous to the Tribe's Reservation or other trust land, and thus only the criteria in § 151.10 apply, is not adequately explained or supported in the Decision or the administrative record.

The off-reservation criteria will not be applied if the land to be acquired is located either "within or contiguous to an Indian reservation." 25 C.F.R. § 151.10. The term "contiguous" is not defined in Part 151. We have held that to be contiguous under

Part 151, "at a minimum, the lands must touch." *Jefferson County, Oregon, Board of Commissioners v. Northwest Regional Director*, 47 IBIA 187, 206 (2008). Parcels that "adjoin or abut" are contiguous. *Id.* at 205; *see also State of Kansas*, 56 IBIA at 230 ("Parcels that share a boundary are deemed 'contiguous.'"). On the other hand, a finding that lands are "adjacent" to one another is not necessarily the same as a determination that they are contiguous. *See County of San Diego, California v. Pacific Regional Director*, 58 IBIA 11, 26-27 (2013).

In the Decision, the Regional Director states that "the property is adjacent to [H]ighway 246 which runs along the Santa Ynez Reservation and is contiguous to the Reservation." Decision at 4. Referencing comments by POLO and Marino stating that the Tribe's gaming facility is not on trust land, the Decision also states without further explanation that the referenced gaming property, identified as T5061, is held in trust, and "[w]ith that said, the proposed property of 2.13 acres is contiguous to the Reservation." *Id.* at 8. According to the Decision, the Department has "defined 'contiguous' as 'two parcels of land having a common boundary *notwithstanding the existence of* non-navigable waters or *a public road or right-of-way* and includes parcels that touch at a point.'" *Id.* (emphases added). And this definition, the Decision states, is consistent with the Board's decision in *County of Sauk*, 45 IBIA 201. In her answer brief, the Regional Director clarifies that the Part 151 regulations do not define the term "contiguous," rather, that definition is included in the BIA Fee-to-Trust Handbook. Regional Director's Answer Br. at 22-23.

However, the handbook definition cannot carry any legal force or effect against a party in the absence of notice-and-comment rulemaking. *County of San Diego*, 58 IBIA at 28 n.22. And, as the County argues, in *County of Sauk* the Board found that the county had raised the issue of a highway separating the tribal lands for the first time on appeal and thus did not need to be addressed. *See County of Sauk*, 45 IBIA at 208-09 n.11. The Board noted in any event that the road location was based on a surface use easement, and concluded that the "fact that a highway easement separates the actual land surfaces of the two parcels does not render them any less contiguous for purposes of section 151.10." *Id.* at 213. In subsequent decisions, we have explained that it is not necessarily permissible for BIA to simply assume that the existence of a highway is irrelevant, and that a careful analysis of title records may be required. *See POLO*, 58 IBIA at 309-12 (concluding that the record supported the regional director's determination that the Tribe's 6.9-acre parcel is contiguous to the Tribe's Reservation notwithstanding that they are separated by Highway 246, because they elsewhere share a common boundary or, at a minimum, they touch one another through subsurface interests owned by the Tribe); *County of San Diego*, 58 IBIA at 27-28 (vacating decision because regional director did not properly consider whether the parcel was contiguous to existing tribal trust lands, from which it was separated by several highways, and the record appeared to be incomplete). In the present case, it is unclear

whether the Regional Director examined the ownership of the subsurface interests nor have we been able to find a common boundary or to determine ownership of the subsurface interests based on our review of the record. On appeal, the Regional Director responds to arguments by the County regarding the purported meaning of Federal case law regarding tribal regulatory jurisdiction over public roads and rights-of-way intersecting or near a reservation, but does not squarely address who holds title to the servient estate over which the highway, roadway, and right-of-way run and allegedly preclude a finding of contiguity in this case. *See* Regional Director's Answer Br. at 23-25.

Therefore, we vacate the Decision and remand the matter for further consideration. On remand, the Regional Director may determine that the Mooney-Escobar Parcel is "contiguous" to the Tribe's Reservation, based on supported conclusions, or she may consider this acquisition pursuant to the criteria in § 151.11.

2. Tribe's Need for Additional Land – § 151.10(b)

Turning now to the criteria in § 151.10, the County argues that the Regional Director did not appropriately consider the Tribe's "need" under § 151.10(b) ("[t]he need of the . . . tribe for additional land"). County's Opening Br. at 8-10; County's Reply Br. at 22-23. Specifically, the County contends that the Tribe failed to establish a need for the amount of land it seeks to have transferred. County's Opening Br. at 8. The County also contends that the Regional Director did not consider the Tribe's need for additional lands in trust status. *Id.* at 9-10. Related to those contentions, the County asserts that the Regional Director did not consider the necessity of taking the Mooney-Escobar Parcel into trust in light of the Tribe's existing Reservation and other trust land. *Id.* at 9. And the County notes that the Tribe holds a state-issued permit to use recycled wastewater on the Mooney-Escobar Parcel and that trust status would not free the lands from regulatory authority over recycled water use with respect to the U.S. EPA. *Id.* at 10. Further, the County contends that the Regional Director's analysis is "conclusory" and offers insufficient explanation under the Board's decision in *Ziebach County, South Dakota v. Great Plains Regional Director*, 36 IBIA 201 (2001). *Id.* at 8-9; County's Reply Br. at 23.

We conclude that the Regional Director adequately considered and explained the Tribe's need for additional land. The County offers no authority for the proposition that the Tribe is required to establish a need for the specific amount of land involved, much less detail why trust status is more beneficial. To the contrary, we have held that a tribe "is not required to show that trust status for the land is required for the [t]ribe to achieve its stated needs, much less justify, acre-by-acre, the need for trust status. There simply is no requirement in the IRA or in the regulations that requires the [t]ribe to make this showing or for BIA to opine on it." *State of New York*, 58 IBIA at 341-42 (quoting *Shawano County*, 53 IBIA at 78 (rejecting the argument that a tribe might only "require" 1/4 of the acreage

proposed for trust acquisition)); *see Cachil Dehe Band of Wintun Indians of the Colusa Indian Cmty. v. Zinke*, No. 17-15245, 2018 U.S. App. LEXIS 11297, at *23-24 (9th Cir. May 2, 2018) (rejecting arguments that the applicant had to demonstrate that only the particular parcel of land would suffice and that the existence of other parcels owned by the applicant undercut the "need" for the parcel at issue).

The Regional Director concluded that acquiring the 2.13-acre Mooney-Escobar Parcel in trust would meet several needs of the Tribe, including the ability to exercise "self-determination and sovereignty over the property and its natural resources," such as water, which would otherwise "be subject to the authority of the State of California and the County." Decision at 10-11. Further, the Regional Director described the Tribe's existing trust lands in some detail, and found that the Mooney-Escobar Parcel would contribute to meeting the Tribe's short- and long-range needs, including growth and protection of the Tribal land base for future generations. *See id.* This is a sufficient analysis of the Tribe's need for additional land and is distinguishable from *Ziebach County*, where a superintendent's decision to acquire land in trust contained mostly conclusory statements regarding the criteria set forth in 25 C.F.R. § 151.10 and where the regional director failed to supply additional analysis or to respond to the appellant's arguments challenging the superintendent's decision. *See Ziebach County*, 36 IBIA at 204; *see also Cachil Dehe Band*, 2018 U.S. App. LEXIS 11297 at *23 ("it is 'sufficient for the Department's analysis to express the [t]ribe's needs and conclude generally that IRA purposes were served'" (quoting *South Dakota v. United States Department of the Interior*, 423 F.3d 790, 801 (2005)).

3. Purposes for Which the Land Will be Used – § 151.10(c)

Next, the County argues that the Regional Director did not adequately consider, under § 151.10(c), the purposes for which the Mooney-Escobar Parcel will be used. County's Opening Br. at 10; County's Reply Br. at 23. In the Decision, the Regional Director explained in part that the Tribe has no plans to change its current uses of the property, and thus will "maintain such landscaping, access, and recycled water irrigation uses." Decision at 12. The County contends that the Decision fails to describe "the scope of those uses" and "did not adequately describe the easement utilities or roadways." County's Opening Br. at 10; County's Reply Br. at 23.

In considering § 151.10(c), "BIA must first determine the current use of the property, then ascertain the [t]ribe's plans for the property." *Thurston County*, 56 IBIA at 307. The Regional Director's analysis of § 151.10(c) is sufficient and need not further examine the "scope" of the Tribe's uses. The factors need not be exhaustively analyzed. *Shawano County*, 53 IBIA at 69. Nor does the County identify what information should

have been included or why it is relevant.[21] We also note that, in addition to the Regional Director's analysis described above, the Decision and administrative record provide additional information on the Tribe's current uses, existing easements, and roadways, and the Decision explains that no new easements (or leases) are anticipated. *See, e.g.*, Decision at 12-13; Land Title Surveys (Application, Exs. J, K). Thus, we conclude that the County has not met its burden to show that the Regional Director failed adequately to consider the purpose for which the property will be used.

4. Tax Impacts – § 151.10(e)

The County argues that the Regional Director failed appropriately to consider the impact on the County of removing the Mooney-Escobar Parcel from the tax rolls as required by § 151.10(e). County's Opening Br. at 10-11; County's Reply Br. at 23-24. In the Decision, the Regional Director concluded that the amount of tax revenue that would be lost by transferring the Mooney-Escobar Parcel into trust would be insignificant in comparison to the total property tax assessments for the County. Decision at 12. Specifically, the Regional Director found that the total assessed taxes for the Mooney-Escobar Parcel during the 2013-2014 tax years was $24,047.22,[22] and that this represents less than 1% of the total $651 million in revenue that the County expected to generate from property taxes for that period. Decision at 12. The Regional Director also concluded that "no significant impact" would result from the removal of the property from the County's 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." *Id.*

The County contends that the Regional Director computed the amount of tax loss based on "the County overall," and should instead have focused on the tax loss for the Santa Ynez Valley area, which it contends is significant when viewed in that context. County's Opening Br. at 11. It also contends that the amount of tax loss is significant considering that BIA had completed the 6.9-acre trust acquisition, that BIA had stated its intent to take the more than 1,400-acre Camp 4 property into trust, that the Tribe owns other properties in the same area, and that "[a]ll the trust acres would be removed from the County's tax rolls." *Id.* According to the County, "removal of such tax revenue" is significant in light of the services provided by the County such as law enforcement, fire protection, emergency medical response, and roadway access and maintenance. *Id.* The County further contends

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[21] To the extent, if any, that the County believes the trust acquisition would have an impact on "easement utilities or roadways," those concerns appear related to § 151.10(f).

[22] The County's comments and opening brief state that the figure is $24,198, but the County does not argue that the difference is material. *See* County's Opening Br. at 10.

that the Regional Director has not shown that the tax loss is "completely offset" by the Tribe's financial contributions to the community. County's Reply Br. at 24.

We are not persuaded that the Regional Director erred or abused her discretion in considering this factor. The County provides no authority to support its claim that the Regional Director should have examined the tax impact to the Santa Ynez Valley area, which it does not show is a "political subdivision" under § 151.10(e), instead of the County itself. Nor did the County provide data on property tax assessments for the "Santa Ynez Valley area," however it may be defined. *See Carroll County, Mississippi, Board of Supervisors v. Acting Eastern Regional Director*, 56 IBIA 194, 201 (2013) (appellant provided no evidence to support its assertion that its tax loss would be significant and did not dispute the data provided by the tribe and relied upon by BIA). And the Board has previously rejected the argument that any reduction in the tax base is inherently a significant impact. *Desert Water Agency*, 59 IBIA at 129.

With respect to the County's contention that the Regional Director was required to consider the cumulative effects of removing the Mooney-Escobar Parcel from the tax rolls along with completed and potential future trust acquisitions, we have rejected that premise in other cases. *See Mille Lacs County, Minnesota v. Acting Midwest Regional Director*, 62 IBIA 130, 147 (2016) (it "is simply not the case" that BIA must consider the "current, future and cumulative impact of the removal of lands and all trust lands from the tax rolls"); *State of Kansas*, 56 IBIA at 226; *Shawano County, Wisconsin v. Midwest Regional Director*, 40 IBIA 241, 249 (2005). Subsection 151.10(e) requires, if "the land to be acquired" is in restricted fee status, that BIA must consider the impact on the County resulting from removal of "the land" from the tax rolls. Even if there are circumstances where BIA's proper exercise of discretion may "require consideration of the collective impact of multiple simultaneous fee-to-trust applications," *Kansas*, 56 IBIA at 226, we are not convinced this is such a case. We reject the County's NEPA-related argument that BIA improperly "segmented" a larger proposed action into smaller actions, *infra*, and more importantly the County makes only generalized allegations regarding the services it provides and unsupported assertions that the impacts on County-provided services resulting from the total reduction in tax revenue would be significant.

We also reject the County's argument that the Regional Director made no "showing" that the Tribe's financial contributions to the community would "completely offset" the tax loss. County's Reply Br. at 24. The Regional Director's decision did not reach that conclusion. Rather, the Decision acknowledged the Tribe's contributions in

concluding that the impact to the County would be insignificant.[23] Decision at 12. There is no requirement that a tribe's contributions to a local municipality offset the entirety of a tax loss, and we find no error or abuse of discretion in the Regional Director's conclusion.

5. Jurisdictional Problems and Land Use Conflicts – § 151.10(f)

The County argues that the Regional Director did not adequately consider under § 151.10(f) jurisdictional problems and land use conflicts that may arise. County's Opening Br. at 11-12; County's Reply Br. at 24-25. The County contends that the Regional Director failed to consider that the trust acquisition would "pose issues with respect to overall land use planning for the Santa Ynez Valley," and, specifically, that a proposed County trail and bikeway along Highway 246 "could be" impacted by removing the property from County jurisdiction.[24] County's Opening Br. at 12; *see* County's Reply Br. at 24. The County also contends that potential impacts to roadways, a public utility easement, and public services and fixtures were not considered. County's Opening Br. at 12; County's Reply Br. at 25.

We are not convinced that the Regional Director's analysis is insufficient. Among other things, the Decision examines the current zoning of the Mooney-Escobar Parcel (Commercial Highway) and surrounding areas (Commercial Highway or C-2 Commercial Retail); states that the Tribe developed the property under the County's regulations and proposes no change in use; and describes the Tribe's "consistent[]" cooperation with local government and service providers to help mitigate any adverse effects that its activities may cause, including payments to the County Fire Department, funding of the Tribe's own Wild Lands Fire Department, and installation of traffic signals. Decision at 12-13. And as the County acknowledges, "the Properties are taken into trust subject to existing easements and encumbrances." County's Opening Br. at 12; *see* Regional Director's Answer Br. at 38 (stating that "trust land is subject to existing easements"); Land Title Surveys (Application, Exs. J, K) (describing or depicting easements, utility lines, fixtures, etc.).

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[23] To the extent the Regional Director's answer brief on appeal could be construed as supporting the County's interpretation of the Decision, *see* Regional Director's Answer Br. at 36, we reject it as inconsistent with the Decision itself.

[24] The County's comments provided no more information regarding the alleged potential impacts, stating only that "there is a trail and bikeway . . . which could be impacted by future uses of the properties." County's Comments at 3; *see id.* at 4 (commenting that a NEPA analysis should consider "[i]mpacts to planned circulation for bicycles and pedestrians").

We agree with the Regional Director that the County "relies on general allegations and provides no information explaining the claimed or potential effect upon the proposed trails or existing easements. The materials the County seeks to have [the Board take official notice of] on these points are equally lacking in information." Regional Director's Answer Br. at 37-38 (citation omitted). Such general and speculative assertions that a jurisdictional or land use conflict may arise but was not considered are insufficient to demonstrate error or abuse of discretion, and improperly seek to shift the County's burden onto BIA. *See State of New York*, 58 IBIA at 347 (rejecting appellants' attempt to "shift the burden to BIA and the [t]ribe to show that the proposed acquisition will not have any impact on [a]ppellants' use of the easements or rights-of-way"). Therefore, we conclude that the Regional Director adequately considered potential jurisdictional problems and land use conflicts.

6. BIA's Ability to Discharge Resulting Responsibilities – § 151.10(g)

Next, the County argues that the Regional Director's conclusion under § 151.10(g) that BIA is equipped to discharge additional responsibilities resulting from the trust acquisition of the Mooney-Escobar Parcel is mistakenly based on emergency services agreements that do not apply to this property. County's Opening Br. at 12-13; County's Reply Br. at 25. The County argues, and we agree, that the Regional Director must still address whether BIA is able to discharge any additional responsibilities related to these services.

In analyzing this factor, the Regional Director's Decision states that "[e]mergency services to the property are provided by the City and County Fire and Police through agreements between those agencies and the Tribe." Decision at 13. Thus, the Decision appears to suggest that these services would be provided to the property through the agreements after trust acquisition. The County contends that such agreements are for the Reservation boundaries that existed at the time of their execution and would not include the Mooney-Escobar Parcel. County's Opening Br. at 12-13. In response, the Regional Director argues that "services may still be provided to the Parcel once taken into trust" because "[b]oth agreements include provisions related to future trust acquisitions." Regional Director's Answer Br. at 39; *see id.* at 41. To clarify matters, the Tribe explains that while it "has requested those agreements be extended to the subject property, at present this property is not included in the general service area of such agreements." Tribe's Answer Br. at 55. The Tribe argues that, "[a]t the most, the BIA would contract with CalFire (a state agency) to act as additional support for fires on the reservation, but there is no indication that this parcel would require this level of fire and police service." *Id.* at 56.

"[T]he determination of whether BIA can handle the additional duties is a managerial judgment that falls within BIA's administrative purview." *State of Kansas*,

56 IBIA at 228 (internal quotation marks omitted). The Decision finds that the acquisition "should not impose any additional responsibilities or burdens on the BIA beyond those already inherent in the Federal trusteeship over the Santa Ynez Reservation" and "will place no discernable burdens on the BIA." Decision at 13. The Decision explains that the Mooney-Escobar Parcel does not include any forestry or mineral resources that would require BIA management, that the property will continue to be managed by the Tribe's Environmental Department, and that the property will be maintained in its current state and thus no new easements or leases requiring BIA approval are anticipated for the property. *Id.* Although the County does not argue that BIA would not be able to discharge any additional responsibilities related to emergency services, in light of the Regional Director's erroneous finding regarding emergency services, on which she apparently relied at least in part, we remand the matter for the Regional Director's further consideration of § 151.10(g).

C. Compliance With NEPA[25]

The County also contends that BIA's NEPA analysis was insufficient because it is based on a CE. We find that the County has not shown error or abuse of discretion in the Regional Director's use of the CE.

The Department's regulations implementing NEPA specify that a proposed Federal action that is subject to an agency's control and responsibility, and would cause effects on the human environment, is subject to NEPA's procedural requirements. 43 C.F.R. § 46.100(a). Certain activities may be categorically excluded from NEPA's requirement to prepare an EA or EIS. *See* 40 C.F.R. § 1508.4; 43 C.F.R. §§ 46.205, 46.210. Interior's Departmental Manual provides a list of BIA actions that are designated as CEs, *see* 516 DM 10.5, including, as relevant here, "[a]pprovals or grants of conveyances and other transfers of interests in land where no change in land use is planned," 516 DM 10.5(I). Such actions "do not individually or cumulatively have a significant effect on the human environment," and have been found to have no such effect in Federal agency procedures. 40 C.F.R. § 1508.4; *State of New York*, 58 IBIA at 349 n.33. Accordingly, we have explained that "[t]he bare decision to take land into trust where no change in the use of the property is planned ordinarily does not implicate environmental concerns or NEPA and is categorically excluded." *Voices for Rural Living v. Acting Pacific Regional Director*, 49 IBIA 222, 234 n.14 (2009).

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[25] To the extent that the County also argues that the Regional Director failed appropriately to consider, under 25 C.F.R. § 151.10(h), the extent which the Tribe provided information that enables the Secretary to comply with NEPA, we address that argument in the context of addressing the County's claim that BIA failed to comply with NEPA itself.

The County first argues that the CE is inapplicable because the Regional Director improperly segmented her analysis of the Mooney-Escobar Parcel trust acquisition from the Tribe's "overall goal" of growing its land base in the Santa Ynez Valley. County's Opening Br. at 16-19. The County contends that BIA is "reviewing fee-to-trust applications for Tribal property on a staggered and piece-meal basis" instead of in a single environmental review. *Id.* at 16-17. But the regulation that the County relies on to make this argument, 40 C.F.R. § 1508.25(a)(3), does not apply to CEs. *See id.* (discussing scope of impacts to be included in an EIS); *Ctr. for Biological Diversity v. Salazar*, 706 F.3d 1085, 1097 (9th Cir. 2013). And even if we were to apply it, the County has not shown that the acquisition of this property is part of a larger project or action proposed by the Tribe. *See* 40 C.F.R. § 1508.25(a)(3). The County cites only the Tribe's "goal of land growth" and acknowledges that the Tribe's previous four trust applications were submitted over a 10-year period. County's Opening Br. at 17. As discussed *infra*, those applications were for different purposes. The Regional Director explained that the "expansion of the Tribe's land base does not result, by itself, in significant environmental effects." CE at PDF 3. And as the CE notes, *see id.*, BIA is not required to speculate regarding the Tribe's plans for its remaining property or potential future fee-to-trust applications. *County of San Diego*, 58 IBIA at 32. We conclude that the CE is not a product of improper segmentation.

Second, the County argues that the proposed acquisition does not qualify for a CE because it has a direct relationship to the Tribe's 6.9-acre and 1400-acre trust acquisitions, referenced in the CE, and together they have a cumulatively significant effect. County's Opening Br. at 19-21 (citing 43 C.F.R. § 46.215(f) (extraordinary circumstance based on an action that has "a direct relationship to other actions with individually insignificant but cumulatively significant environmental effects")). The Regional Director concluded that acquisition of the Mooney-Escobar Parcel was not related to other actions with individually insignificant but cumulatively significant environmental effects. CE at PDF 1, 3. In doing so, the Regional Director discussed the Tribe's 6.9-acre and 1400-acre trust acquisitions, and explained that they were for recreational, educational, commercial, and residential purposes, and that no significant impacts were found to result. *Id.* at PDF 3. She also explained that, because no change in land use was planned for the Mooney-Escobar Parcel, it would not contribute to significant environmental effects. *Id.* This is sufficient to show that the Regional Director adequately assessed whether greater environmental analysis was warranted under the extraordinary circumstance identified in 43 C.F.R. § 46.215(f).

Third, the County argues that the proposed acquisition does not qualify for a CE because it involves other extraordinary circumstances under 43 C.F.R. § 46.215, including what the County describes as "(1) impacts to recreation lands, floodplains, or ecologically significant or critical areas; and (2) impacts on public health or safety." County's Opening Br. at 21. As we explained *supra* in the context of standing, the County has provided little

insight on what impacts would occur or how they would impact, e.g., ecologically significant or critical areas, even though no change in the use of the Mooney-Escobar Parcel is planned. The County asserts that Zanja de Cota Creek may be affected by the use of recycled water, and that after the trust acquisition the County will no longer be able to enforce its environmental regulations to protect this resource. County's Reply Br. at 30. But in the context of disputing the Tribe's need for the acquisition, the County also argues that this is an existing use and that the acquisition would not free the Tribe from regulatory oversight as the Tribe would be under the jurisdiction of the U.S. EPA with respect to recycled water irrigation. County's Opening Br. at 10. The CE also concludes that the jurisdictional change would not result in significant environmental impacts, as the water would be of the same quality currently required by the California State Water Board. CE at PDF 3; *see supra* note 11. The County's speculation that such impacts would occur does not show that the Regional Director erred in concluding that the acquisition falls within a CE. *See State of New York*, 58 IBIA at 352 (rejecting speculative allegations of environmental consequences as sufficient to demonstrate error in BIA's use of a CE).

Finally, the County argues that BIA failed to publicize and make the CE and the Tribe's fee-to-trust application available for public comment prior to issuing the Decision. County's Opening Br. at 22. BIA is not required to notify the public when it intends to rely on a CE for a trust acquisition decision. *State of New York*, 58 IBIA at 355 n.40. BIA also met the notice requirements of 25 C.F.R § 151.10 by providing notice of the Tribe's application to the state and local governments having regulatory jurisdiction over the land to be acquired. The record also shows that BIA made a copy of the application available for public inspection and provided a copy to interested parties who requested it.[26] The County does not claim it made a request that was denied.

Conclusion

For the reasons discussed above, we vacate the Regional Director's decision to accept the lands into trust and remand the matter for further consideration of whether the lands are contiguous to the Tribe's Reservation and whether BIA is equipped to discharge the additional responsibilities that would result from acquisition of the lands in trust. On remand, the Regional Director may determine based on supported conclusions that the lands are, in fact, "contiguous" to the Tribe's Reservation, which conclusions BIA has not made to date, or she may consider this acquisition pursuant to the "off-reservation" criteria of 25 C.F.R. § 151.11. We dismiss NMS's and POLO's appeals for lack of standing.

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[26] *See* Email from BIA Realty Specialist to Senior Legal Analyst, State of California Department of Justice, Aug. 26, 2015 (AR Realty 15); Email from BIA Realty Specialist to Pappas, Sept. 17, 2015 (AR Realty 19).

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the Board dismisses the appeals in Docket Nos. IBIA 16-053 and 16-054, and vacates the Decision and remands the matter for action consistent with the reasons stated herein.

I concur:

Mary P. Thorstenson
Administrative Judge

Thomas A. Blaser
Chief Administrative Judge

County of Santa Barbara, California; No More Slots; and Preservation of Lost Olivos v. Pacific Regional Director, Bureau of Indian Affairs
Docket Nos. IBIA 16-051, 16-053 and 16-054
Order Dismissing Appeals in Docket Nos. 16-053 and 16-054, and Vacating Decision and Remanding
Issued May 15, 2018
65 IBIA 204

Amber R. Holderness, Esq.
Deputy County Counsel
for Appellant, County of Santa Barbara
105 E. Anapamu Street, Suite 201
Santa Barbara, CA 93101
BY CERTIFIED MAIL

James Marino, Esq.
for Appellant, No More Slots
1026 Camino del Rio
Santa Barbara, CA 93110
BY CERTIFIED MAIL

Kenneth R. Williams, Esq.
for Appellant, Preservation of Los Olivos
980 9th Street, 16th Floor
Sacramento, CA 95814
BY CERTIFIED MAIL

Lewis P. Geyser, Esq.
715 Cuatro Caminos
Solvang, CA 93463-9790

Nancie G. Marzulla, Esq.
Roger J. Marzulla, Esq.
Brenda L. Tomaras, Esq. (Tomaras & Ogas, LLP)
for Santa Ynez Band of Chumash Mission Indians
Marzulla Law, LLC
1150 Connecticut Avenue NW, Suite 1050
Washington, DC 20036

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

Joe Dhillon, Senior Advisor
Tribal Negotiations, Office of the Governor
State Capitol Building, Suite 1173
Sacramento, CA 95814

Sara J. Drake
Deputy Attorney General
State of California Department of Justice
P.O. Box 944255
Sacramento, CA 94244-2550

Distribution: continued – page 2

City Manager, City of Solvang
1644 Oak Street
Solvang, CA 93463

Buellton City Hall
P.O. Box 1819
Buellton, CA 93427

Santa Ynez Community Services District
P.O. Box 667
Santa Ynez, CA 93460

Mark Oliver, President
Santa Ynez Valley Alliance
P.O. Box 941
Santa Ynez, CA 93460

Cathy Christian, Esq.
Nielsen Merksamer Parrinello Gross & Leoni LLP
1415 L Street, Suite 1200
Sacramento, CA 95814

Klaus M. Brown, Treasurer
Santa Ynez Valley Concerned Citizens
P.O. Box 244
Santa Ynez, CA 93460

William R. Devine, Esq.
1900 Main Street, 5th Floor
Irvine, CA 92614-7321

Cathie McHenty, President
Women's Environmental Watch
P.O. Box 830
Solvang, CA 93464

Cheryl Schmit, Director
Stand Up For California
P.O. Box 355
Penryn, CA 95663

Andi Culberton
1975 Still Meadow Road
Ballard, CA 93463

Rob Walton
305 White Oak Road
Santa Ynez, CA 93460

Kathy Cleary
P.O. Box 1103
Pebble Beach, CA 93953-1103

Linda Kastner
P.O. Box 402
Santa Ynez, CA 93460

Erica Williams
Ryan Williams
1899 View Drive
Santa Ynez, CA 93460

Kelly Patricia Burke
Sean Wiczak
1895 View Drive
Santa Ynez, CA 93460

Linda Krop, Esq.
Nicole G. DiCamillo, Esq.
Environmental Defense Center
906 Garden Street
Santa Barbara, CA 93101

Distribution: continued – page 3

Ella Foley Gannon, Esq.
Morgan Lewis & Bockius, LLP
One Market Street, Spear Street Tower
San Francisco, CA 94105

Wendy Welkom, Esq.
Cappello & Noel, LLP
831 State Street
Santa Barbara, CA 93101

City of Santa Barbara
P.O. Box 1990
Santa Barbara, CA 93102-1990

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

Pacific Regional Director
Bureau of Indian Affairs
2800 Cottage Way
Sacramento, CA 95825

Pacific Southwest Regional Solicitor
Office of the Solicitor
U.S. Department of the Interior
2800 Cottage Way, Room E-1712
Sacramento, CA 95825

Matthew Kelly, Esq.
Office of the Solicitor
U.S. Department of the Interior
1849 C Street, NW, MS 6513 - MIB
Washington, DC 20240