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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

LEWIS P. GEYSER, ROBERT B. CORLETT AND T. LAWRENCE JETT

Plaintiffs,

v.

UNITED STATES OF AMERICA; U.S. DEPARTMENT OF THE INTERIOR; U.S. BUREAU OF INDIAN AFFAIRS, a division of the United States Department of the Interior; RYAN ZINKE, in his official capacity as Secretary of the Interior; MICHAEL S. BLACK, in his official capacity as Acting Assistant Secretary of Indian Affairs; AMY DUTSCHKE, in her official capacity as Director, Pacific Region, Bureau of Indian Affairs,

Defendants.

Case No.:

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs Lewis P. Geyser, Robert B. Corlett, and T. Lawrence Jett ("Plaintiffs") bring this Complaint against Defendants United States of America; U.S. Department of the Interior ("DOI"), an agency of the United States of America; the Bureau of Indian Affairs ("BIA"), a bureau of the DOI; Ryan Zinke, in his official capacity as Secretary of the Interior; Michael S. Black, in his official capacity as Acting Assistant Secretary of Indian Affairs; and Amy Dutschke, in her official capacity as Director, Pacific Region, Bureau of Indian Affairs. (collectively, "Defendants").

NATURE OF ACTION

1. This action asserts claims under the Administrative Procedure Act ("APA"), 5 U.S.C. § 701 *et seq.*, and the United States Constitution to overturn the unlawful and unconstitutional decision (the "Decision") by the executive branch of the federal government to remove California's jurisdictional authority over 1,427 acres of its sovereign land ("Camp 4"). That Decision transfers land to federal trust, and asserts that as such an Indian tribe will regulate that land, together with the federal government, to the complete exclusion of State law. This exclusion extends to all matters of traditional State authority, including regulations striking at the heart of traditional State control. According to the Decision, there is no meaningful check—constitutional or statutory—on the ability of the federal government to establish federal or Indian enclaves on sovereign land that has always been governed and controlled by the State.

2. The Decision is wrong. It violates longstanding statutory and constitutional limits that require the State's explicit consent before the federal government may oust the State's jurisdiction in favor of its own exclusive jurisdiction. *First*, 40 U.S.C. § 3112 precludes the United States from accepting jurisdiction over State land unless it first obtains the State's "consent." *See* 40 U.S.C. 3112(b), (c) ("jurisdiction has not been accepted until the Government

accepts jurisdiction over land as provided in this section"). *Second*, Article I, Section 8, Clause 17 of the United States Constitution ("Clause 17") likewise conditions the federal government's power to "exercise exclusive Legislation" over State land on "the Consent of the Legislature of the State in which the same shall be." Clause 17 covers acquisitions by any means of title to any land within a State, and places constitutional constraints on the federal government's authority to take land into trust for an Indian tribe. *Third*, core attributes of State sovereignty embodied in the constitutional structure prohibit "Congress, after statehood, [from] reserv[ing] or convey[ing] . . . lands that 'have already been bestowed' upon a State." *Idaho v. United States*, 533 U.S. 262, 280 (2001). Yet that is precisely what the Decision purports to do—without the State's permission.

3. Under those statutory and constitutional principles, the Decision cannot stand, for it is undisputed that the United States did not obtain California's consent to exercise any jurisdiction over Camp 4. The Decision should accordingly be restricted, and the Court should enter declaratory and equitable relief as requested and discussed below.

PARTIES

4. Plaintiffs are Lewis P. Geyser, Robert B. Corlett and T. Lawrence Jett. Each Plaintiff owns property near Camp 4, resides within the Santa Ynez Valley, Santa Barbara County, California, and utilizes its roads, highways, and facilities, and relies on the police, safety, fire, and hospital services, and the zoning and building codes and restrictions of the Santa Barbara County government protecting the Valley. As a result of the Decision, Plaintiffs will suffer economic, environmental, and aesthetic harms, including those pertaining to traffic, policing, fire control, air quality, and pollution. They accordingly have

standing to challenge the decision. *See Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak*, 132 S. Ct. 2199 (2012). They also have standing under *Bond v. United States*, 131 S. Ct. 2355 (2011), to enforce the federalism principles embodied by 40 U.S.C. § 3112, Clause 17, and the U.S. Constitution.

5. Defendants are the parties who have issued that certain decision contained in the Notice of Decision ("NOD") issued on December 24, 2014 ("the Decision", Exhibit "A" attached hereto) by the United States Department of the Interior ("DOI" herein), Bureau of Indian Affairs ("BIA" herein), Pacific Regional Office, by which approval was granted of the "application of the Santa Ynez Band of Chumash Mission Indians to have the … described property [land located in the Santa Ynez Valley, Santa Barbara County, California hereinafter referred to as Camp 4] accepted by the United States of America in trust for the Santa Ynez Band (referred to in the Decision and hereinafter as the "Tribe") of Chumash Indians of the Santa Ynez Reservation of California."

6. Defendant Ryan Zinke is the Secretary of the DOI and is named herein in his official capacity. In his capacity as Secretary, Defendant Zinke exercises ultimate authority, supervision and control over Defendants Michael Black and Amy Dutschke and their subordinates within the BIA, a bureau within the DOI.

7. Defendant Michael Black is the Acting Assistant Secretary – Indian Affairs ("Assistant Secretary"), and is named herein in his official capacity, and as successor to previous Acting Assistant Secretary Lawrence Roberts. Mr. Roberts continued in the role of Acting Assistant Secretary until July 28, 2016, on which date his service as the Acting Assistant Secretary ended. Thereafter, Mr. Roberts reverted back to his role as Principal Deputy. Upon information and belief, Mr. Roberts continued in the position of Principal Deputy until he left DOI, apparently on January 19 or 20, 2017, after he issued the Appeal Decision (para 20, *infra*.)

8. Defendant Amy Dutschke is the Director of BIA's Pacific Regional Office, and is named herein in her official capacity. Defendant Dutschke exercises direct supervisory authority and control over the BIA's Pacific Region, which covers the State of California, and oversees the operations of the Regional Office and its four BIA Agencies. Defendant Dutschke signed the NOD, and, on information and belief, she executed an acceptance in trust of the Grant Deed from the Tribe to the United States. Defendants Zinke, Black, and Dutschke are responsible officers or employees of the United States and have direct and/or delegated statutory duties in carrying out the provisions of the IRA, codified at 25 U.S.C. § 5101 *et seq*. and the Code of Federal Regulations ("C.F.R."), Title 25, Part 151, in taking land into trust for Native American Tribes.

9. Defendant BIA is a bureau of the DOI, and is an agency of the United States of America acting as trustee of the welfare of federally recognized tribes of Native Americans. In that role, BIA has confirmed the Decision to take Camp 4 into trust for the Tribe.

10. Defendant DOI is an agency of the United States of America having responsibility for the management of federal land and the administration of programs related to Native American Indians, including the fee-to-trust process for Native American Indians. The DOI oversees the BIA and the taking of Camp 4 into trust for the Tribe.

JURISDICTION AND VENUE

11. Plaintiffs bring this action under the Administrative Procedure Act, 5 U.S.C. §§ 701-706. ("APA"). This Court has original jurisdiction over this action pursuant to 5 U.S.C. § 701 *et seq.* and 28 U.S.C. §§ 1331 and 1361 (federal question jurisdiction and suits to compel actions by federal agencies), and may issue injunctive and declaratory relief under 28 U.S.C. §§ 2201 and 2202.

12. An actual controversy currently exists between the parties.

13. Judicial review of the NOD, the Decision, the Appeal Decision, and the Defendants' acceptance of Camp 4 into trust is authorized by the APA. *See* 5 U.S.C. §§ 701-706. Defendants have stated that the Decision is a final decision of DOI and authorizes Defendants to accept Camp 4 into trust. On information and belief Defendants have acted on the NOD and Decision and accepted conveyance documents into trust. The United States has waived its sovereign immunity to suit under 5 U.S.C. § 702.

14. Venue is proper in this judicial district under 28 U.S.C. §§ 1391(b)(2) and 1391(e)(1)(B) and 5 U.S.C. § 703 because a substantial part of the events or omissions giving rise to the claim occurred in this District, and the property that is the subject of the action is situated in this District.

BACKGROUND

Camp 4 Is California Sovereign Land Subject Only To The State's Jurisdictional Authority

15. Camp 4 is an approximately 1,427.78 acre parcel of real property located in the Santa Ynez Valley, Santa Barbara County, California. The Santa Ynez Valley encompasses several communities clustered closely together, within the boundaries of the County of Santa Barbara, with a population of about 20,000 residents. The Santa Ynez Valley is serviced by the Santa Barbara County Sheriff's Department, the Santa Barbara County Fire Department, the California Highway Patrol, by certain police departments, and for education by several lower and intermediate schools, as well as one public high school. There is one hospital located centrally in the Santa Ynez Valley.

16. There are only three highways leading into and out of the Santa Ynez Valley: Highway 101 (a 4 lane highway), Highway 154 (a mostly 2-lane mountain road from Santa Barbara city), and Highway 246 (a mostly-two lane road that joins 154 and 101). These highways are mainly used by traffic going north or

south through the Santa Ynez Valley which generates heavy traffic wholly separate from that traffic destined for the Santa Ynez Valley and within the Santa Ynez Valley to its local small communities. All decisions regarding the development of the Santa Ynez Valley are (and must be) constrained by the fact of its separate and geographically limited location and size. The only government that can satisfy this requirement and the only government having legal legislative jurisdiction is the State of California.

17. Under California Law, all Counties are required to prepare General Plans for the use and development of lands under their legislative jurisdiction. One such Plan, developed over several years, is a separate specific general plan for the Santa Ynez Valley (the "Santa Ynez Valley Community Plan" hereinafter the "SYVC Plan").[1] Camp 4 is a part of that SYVC Plan and has particular designations, uses, and limitations assigned to it. Camp 4 is at the intersection of Highway 154 and Highway 246. The SYVC Plan was required to and does take into account county-wide and local-community considerations regarding traffic, policing, fire control, air quality, pollution, water, sewage, utilities, road, and school capacities, including issues of public welfare and costs. The community sizes and capabilities have all been reviewed as part of the legislative jurisdiction controlled by California State Laws regarding jurisdiction, zoning, education, health, sewer, water, and safety. These plans and decisions are state-mandated

[1] Santa Ynez Valley Community Plan County of Santa Barbara Planning & Development Department Office of Long Range Planning Board of Supervisors Adopted October 6, 2009 http://longrange.sbcountyplanning.org/planareas/santaynez/documents/Board%20of%20Supervisors%20Adoption/Electronic%20Docket/Master%20Final%2010-15-09.pdf (last opened September 8,2017)

community decisions and are generated for the benefit and welfare of the community. Additionally, the SYVC Plan takes into account architectural planning, aesthetic requirements, density rules, and development regulations (including restriction on the amount, type and height of development) which are specifically tailored to several different parts of the Santa Ynez Valley.

18. Plaintiffs have resided in the Santa Ynez Valley for more than 10 years. All Plaintiffs have residences in close proximity to Camp 4. As such nearby property owners, Plaintiffs have prudential standing to challenge the Decision because they will suffer economic, environmental, aesthetic, safety and security harms, from the development of Camp 4 without being subject to the requirements of the SYVC Plan and the exclusive legislative oversight of the State. For example, it is clear that this small valley and its residents, including Plaintiffs, have limited educational, hospital, police, and road and transportation facilities. All three Plaintiffs (and the great majority of the Santa Ynez Valley population) are required to use Highways 154, 246, and 101 for ingress and egress into and out of the Santa Ynez Valley on almost a daily basis. All three Plaintiffs are adversely affected by unrestricted increased traffic patterns, increases in population density, and increased facility demand within the Santa Ynez Valley. The Plaintiffs are part of that community and they, and the community will be severely injured if the SYVC Plan could be simply ignored and overridden by an entity not subject to the legislative jurisdiction and supervision of, and control by, the State. *Patchak*, *supra*[2], leaves no doubt that neighbors to the trust land have

[2] Plaintiffs' allegations are materially indistinguishable from the challenger's in *Patchak*, who asserted that the "statutory violation will cause him economic, environmental, and aesthetic harm as a nearby property owner." 132 S. Ct. at 2210. As the Court found, those allegations easily satisfied the not "especially demanding" prudential-standing test:

"We apply the test in keeping with Congress's 'evident intent' when enacting the

standing under the APA and Article III; and *Bond v. United States*, 131 S. Ct. 2355 (2011), makes just as clear that an individual may enforce the federalism principles embodied by 40 U.S.C. § 3112, Clause 17, and the Tenth Amendment of the United States Constitution.[3]

The Decision Improperly Asserts Exclusive Federal/Tribal Jurisdiction Over Camp 4 To The Exclusion of California Authority

19. The Tribe purchased Camp 4 from its then-private owner (subject to recorded agreements with the State of California) and filed an application for the United States to take it into trust pursuant to "the Indian Land Consolidation Act of 1983 (25 U.S.C. Sec. 2202, and … applicable Code of Federal Regulations (CFR), Title 25, INDIAN, Part 151, as amended." (Decision p. 3).

20. The Decision was appealed by Plaintiffs Geyser and Corlett, and numerous individuals and groups representing other individuals residing in the Santa Ynez Valley, which resulted in another decision, by the Principal Deputy Assistant Secretary- Indian Affairs (the "Appeal Decision" attached hereto as Exhibit "B") issued on January 19, 2017, rejecting every appeal, and affirming the "Regional Director's December 14, 2014 decision." The Appeal Decision was

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APA 'to make agency action presumptively reviewable.'"
As the Court stated, those same allegations satisfied Article III standing.

[3] The Supreme Court has made clear that individuals can invoke the Tenth Amendment by "asserting injury from governmental action taken in excess of the authority that federalism defines. [Their] rights in this regard do not belong to a State." *Bond*, 131 S. Ct. at 2363-64. Rejecting the precise type of argument the Defendants made in the Appeal Decision, the Court explained: "State sovereignty is not just an end in itself: Rather, federalism secures to citizens the liberties that derive from the diffusion of sovereign power. . . ."

further appealed within the BIA Regulation structure by Plaintiffs Geyser and Corlett and certain of the others, resulting in the Order Denying Reconsideration (Exhibit "C" attached hereto) signed by Defendant Michael S. Black, on August 24, 2017 terminating appeals of the Decision, and thus making the Decision final as of that date. The Federal Government appears to have accepted the Camp 4 deed from the Tribe and created the typical Trust position for the benefit of the Tribe for Camp 4, incorporating the Decision.

21. Under the Decision, exclusive legislative jurisdiction over Camp 4 is transferred from California and assigned to the federal government and the Tribe, thus preempting all State control (traditional and otherwise) from this State sovereign territory. This staggering result is confirmed by multiple passages in the Decision. It says that the "trust lands" would not fall "under the County's jurisdiction" (at 17); the "Tribe ... would no longer be subject to State or local jurisdiction" (at 21); "placing the property into trust allows the Tribe to exercise its self-determination and sovereignty over the property *Ibid*.; and "[o]nce the lands are placed under the jurisdiction of the Federal and tribal governments, the tribal right to govern the lands becomes predominant" *Ibid*.

22. Indeed, the Decision itself confirms that it is necessary to remove the land from California's sovereign territory precisely to avoid State control: "If the land were to remain in fee status, tribal decisions concerning the use of the land would be subject to the authority of the State of California and the County of Santa Barbara, impairing the Tribe's ability to adopt and execute its own land use decisions and development goals." *Ibid.* In short, "in order to ensure the effective exercise of tribal sovereignty and development prerogatives with respect to the land" - and thus to ensure the complete displacement of local control – "trust status is essential." *Ibid*.

Defendants Did Not Obtain California's Consent

23. California did not consent, and has never consented, to the exercise of exclusive federal/tribal jurisdiction imposed by the Decision.

24. Nor was jurisdiction over Camp 4 reserved when California was admitted to the Union. California was admitted on September 9, 1850. Its act of admission provided that "the said state of California is admitted into the Union upon the express condition that the people of said state, through their legislature or otherwise, shall never interfere with the primary disposal of the public lands within its limits." There is no exception for Indian Land or Indian Tribes. All of the lands in California, on admission to statehood, became subject to the State's sovereign authority. At the moment of California's admission, Congress and the President vested in California the accouterments of sovereignty, including title to all lands in the State not reserved to the United States in the Act of Admission.

25. If the United States wished to reserve certain California Republic lands for exclusive federal jurisdiction, it had to say so explicitly, and then, of course, retain the land. The Supreme Court explained this proposition in the context of Colorado's admission: "The Act of March 3, 1875, necessarily repeals the provisions of any prior statute or of any existing treaty which are clearly inconsistent therewith. Whenever, upon the admission of a state into the Union, Congress has intended to except out of it an Indian reservation or the sole and exclusive jurisdiction over that reservation, *it has done so by express words.*" *United States v. McBratney*, 104 U.S. 621, 623-24 (1881) (emphasis added; citation omitted); *see Draper v. United States*, 164 U.S. 240, 243-44 (1896); *see also Nevada v. Hicks*, 533 U.S. at 365 ("The States' inherent jurisdiction on reservations can of course be stripped by Congress," but only in the Act of Admission). Indeed, the Federal Government has done exactly that with other

Admission Acts. *See, e.g.*, 25 U.S. Statutes at Large, February 22,1889, c 180 at 676 ("That the people inhabiting said proposed States do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof, *and to all lands lying within said limits owned or held by any Indian or Indian tribes; and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States.*") (emphasis added).

26. Here, by contrast, the Federal Government released all rights regarding Indian Lands in California by failing to reserve such rights in California's Act of Admission. As the Court said in *McBratney*, "the act contains no exception of the Ute Reservation or of jurisdiction over it." 104 U.S. at 623. Likewise, the California Admission Act reserves public lands without any exception for Indian lands or any provision that their jurisdiction and control remain vested in Congress. Therefore, all such lands are subject to State regulation unless the United States obtains the State's consent to cede jurisdiction.

By Exercising Exclusive Jurisdiction Without The State's Consent, The Decision Is Unlawful

27. The Decision's wholesale elimination of all State authority without the State's consent is incompatible with controlling law. This is not a typical situation of a State interfering with Tribal regulation on an established "State consented" or "admission reserved" tribal reservation. On the contrary, this is an attempt by the Tribe to purchase *private* land—subject to the State's ordinary and

sovereign authority[4]—and transfer that land to exclusive federal and Tribal control. The mechanism set up by the BIA flouts the State's role in regulating its own territory. Under a proper scheme, "the Indians' right to make their own laws and be governed by them *does not exclude* all state regulatory authority on the reservation." *Nevada v. Hicks*, 533 U.S. 353, 361 (2001) (emphasis added); *see ibid.* ("State sovereignty does not end at a reservation's border. Though tribes are often referred to as 'sovereign' entities, it was 'long ago' that 'the Court departed from Chief Justice Marshall's view that 'the laws of [a State] can have no force' within reservation boundaries' [citations omitted]. 'Ordinarily', it is now clear, 'an Indian reservation is considered part of the territory of the State.'" (citations omitted)). The Supreme Court explained that when "state interests outside the reservation are implicated, States may regulate the activities even of tribe members on tribal land." *Id.* at 362. As noted above, there can be no question that the proposed development of Camp 4 will implicate significant "state interests outside the reservation." *Ibid.* The Decision itself says exactly that. For the Decision to be permissible at all, it must preserve traditional State control over this area. Contrary to the Decision's contention, Tribal authority and BIA decision-making are not adequate substitutes for State regulation. The Decision cannot supplant State power without satisfying constitutional and statutory requirements.

28. *First*, 40 U.S.C. § 3112 provides that the federal government may not obtain exclusive or concurrent jurisdiction over State land without obtaining the State's consent:

[4] The Decision itself acknowledges that the Tribe purchased Camp 4 from a private owner, and acknowledges that at the time of the Decision the Tribe's ownership was private and subject to California's sovereignty. See paragraph 22, *supra.*

> When the head of a department, agency, or independent establishment of the Government, or other authorized officer of the department, agency, or independent establishment, considers it desirable, that individual may accept or secure, from the State in which land or an interest in land that is under the immediate jurisdiction, custody, or control of the individual is situated, consent to, or cession of, any jurisdiction over the land or interest not previously obtained. The individual shall indicate acceptance of jurisdiction on behalf of the Government by filing a notice of acceptance with the Governor of the State or in another manner prescribed by the laws of the State where the land is situated.

40 U.S.C. § 3112(b). Moreover, the government *must* satisfy § 3112(b) to establish its jurisdiction over the land: "It is conclusively presumed that jurisdiction has not been accepted until the Government accepts jurisdiction over land as provided in this section." *Id.* § 3112(c).[5] Section 3112's requirements apply to actions taken by the Federal Government pursuant to the Indian Reorganization Act ("IRA") (25 U.S.C. § 465) and the Indian Land Consolidation Act of 1983 (the "ILCA") (25 U.S.C. § 2202). Section 3112(b) thus has not been satisfied here because California did not give its consent to the Decision.

29. *Second*, independent of Section 3112, Clause 17 also requires the State's consent or cession. That clause gives the Federal government power to "exercise exclusive Legislation . . . over all Places purchased *by the Consent* of

[5] These requirements are consistent with a series of provisions designed to respect the horizontal separation of powers between the Federal Government and the States. *See, e.g.*, 4 U.S.C. § 103 ("The President of the United States is authorized to procure the *assent of the legislature of any State*, within which any purchase of land has been made for the erection of forts, magazines, arsenals, dockyards, and other needful buildings, without such consent having been obtained.") (emphasis added).

the Legislature of the State in which the Same shall be, for the erection of . . . other needful Buildings" (emphasis added). The word "purchased" means an acquisition by any means, and the phrase "other needful Buildings" includes the underlying title to any land within a State. As the Supreme Court explained in *James v. Dravo Contracting Co*., 302 U.S. 134, 148 (1937): "Clause 17 contains no express stipulation that the consent of the state must be without reservations. We think that such a stipulation should not be implied. We are unable to reconcile such an implication with the freedom of the state and its admitted authority to refuse or qualify cessions of jurisdiction when purchases have been made without consent or property has been acquired by condemnation." *See also, e.g., Fort Leavenworth R. Co. v. Lowe*, 114 U.S. 525 (1885).

30. The Framers included Clause 17 to "assure[] that the rights of residents of federalized areas would be protected by appropriate reservations made by the States in granting their respective consents to federalization." The Jurisdictional Report[6] Part I, at 6; *see also* The Federalist No. 43, p. 276 ("All objections and scruples are here also obviated, by requiring the concurrence of the States concerned, in every such establishment."). Similarly, Justice Story, in Commentaries on the Constitution, Volume 3, Section 1219, explained that this exclusive authority to legislate "is wholly unexceptionable; since it can only be exercised at the will of the state; and therefore it is placed beyond all reasonable scruple." Justice Story thus concluded that "if there has been no cession by the

[6] This is a two volume Federal Government prepared report "Interdepartmental Committee for the Study of Jurisdiction Over Federal Areas within the States 1956-57 ("Jurisdictional Report") http://www.supremelaw.org/rsrc/fedjur/fedjur1.htm and http://www.supremelaw.org/rsrc/fedjur/fedjur2.htm (last opened September 5, 2017.)

state of the place, although it has been constantly occupied and used, under purchase, or otherwise, by the United States for a fort, arsenal, or other constitutional purpose, *the state jurisdiction still remains complete and perfect*." *Id.* at § 1222 (emphasis added). According to the authoritative Jurisdictional Report, there is "*[n]o Federal legislative jurisdiction without consent, cession, or reservation.* It scarcely need to be said that unless there has been a transfer of jurisdiction (1) pursuant to clause 17 by a Federal acquisition of land with State consent, or (2) by cession from the State to the Federal Government, or unless the Federal Government has reserved jurisdiction upon the admission of the State, the Federal Government possesses no legislative jurisdiction over any area within a State, such jurisdiction being for exercise entirely by the State, subject to non-interference by the State with Federal functions, and subject to the free exercise by the Federal Government of rights with respect to the use, protection, and disposition of its property." Part II, Chapter III, at 45. Because the Decision does not comply with Clause 17, it is unlawful.

31. *Third*, when California entered the Union, it entered on equal footing with the original states, and became vested with all "the accoutrements of sovereignty." *Idaho v. United States*, 533 U.S. 262, 282 (2001): "Congress cannot, after statehood, reserve or convey submerged lands that 'have already been bestowed' upon a State" at 281. The Supreme Court has made clear that "Congress cannot, after statehood, reserve or convey" lands that had become sovereign State property upon admission. *Hawaii v. Office of Hawaiian Affairs*, 556 U.S. 163,--- (2009). That is, "[t]he consequences of admission are instantaneous." *Ibid.* Once land falls within a State's sovereign jurisdiction, it cannot be removed from that jurisdiction without the State's consent—any contrary conclusion would wrongly "diminish what has already been bestowed," and "that proposition applies *a fortiori* where virtually all of the State's public

lands—not just its submerged ones—are at stake." *Ibid.* Because Camp 4, as privately owned land sold by the private owner to the Tribe, it is clear that it became sovereign State property in accordance with the California Admission Act at some point in the past. As such it is far too late for the Decision to remove the property from California's jurisdiction.

32. The Indian Commerce Clause does not give Congress the right to exercise exclusive authority over state land without first obtaining the State's consent. The Indian Commerce Clause authorizes Congress to regulate commerce otherwise within its legislative authority.[7] It does not provide Congress the power to abrogate, after admission, the State's sovereign power over land within the State. That issue falls under the purview of Clause 17, and the two constitutional provisions must be read together. The Supreme Court has reaffirmed that the Indian Commerce Clause does not permit Congress to do through the backdoor what Clause 17 prohibits through the front: even when Congress expresses a "clear intent to abrogate the States' sovereign immunity, the Indian Commerce Clause does not grant Congress that power." *Seminole Tribe of Florida v. Florida*, 517 U.S. 44 (1996). Clause 17's specific requirements overcome Congress's general authority under the Indian Commerce Clause. The former provides the exclusive means for Congress to obtain any jurisdiction over State lands. Indeed, the admission acts and the enactment of Section 3112 reflect the continuing necessity of the State's consent: Section 3112 precludes jurisdiction without such consent (precisely because the Constitution requires it), and the

[7] *Nevada v. Hicks, supra,* at 383: "We expressed skepticism that the Indian Commerce Clause could justify this assertion of authority in derogation of state jurisdiction" referencing *United States v. Kagama,* 118 U.S. 375 (1886).

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reason that other states' admission acts have provided such consent is to prequalify compliance with the Constitution (*see supra* ¶ 25).

First Claim for Relief

(The Defendants Have Violated 40 U.S.C. § 3112)

33. Plaintiffs repeat and reallege the allegations in paragraphs 1-32 above.

34. The Decision is contrary to the specific provisions of 40 U.S.C. § 3112, which provides that the United States may not accept jurisdiction without the State's "consent" or "cession."

35. The Decision purports to exercise exclusive jurisdiction over Camp 4. For instance, it states (at 17) that "the lands would be trust lands, and therefore not under the County's jurisdiction….the Tribe…would no longer be subject to State or local jurisdiction."

36. Defendants did not obtain consent from the State as required by Section 3112.

37. Land taken into trust without obtaining the required consent or cession from the State leaves all such land subject exclusively to State jurisdiction for all purposes. *See, e.g.*, 40 U.S.C. § 3112(c) ("It is conclusively presumed that jurisdiction has not been accepted until the Government accepts jurisdiction over land as provided in this section.").

38. The Decision therefore violates Section 3112, and it is arbitrary, capricious, and contrary to law under 5 U.S.C. § 706.

Second Claim for Relief

(The Defendants Have Violated The United States Constitution Article I, Section 8, Clause 17)

39. Plaintiffs repeat and reallege the allegations in paragraphs 1-38 above.

40. Clause 17 of the Constitution prevents the United States from exercising exclusive or any lesser jurisdiction over Camp 4 without obtaining the State's consent.

41. The Decision makes clear that it purports to deprive California of its existing exclusive State jurisdiction over Camp 4: "…placing the property into trust allows the Tribe to exercise its self-determination and sovereignty over the property… If the land were to remain in fee status, tribal decisions concerning the use of the land would be subject to the authority of the State of California and the County of Santa Barbara, impairing the Tribe's ability to adopt and execute its own land use decisions and development goals." Decision p.21.

42. Defendants did not obtain the State's consent as required by Clause 17.

43. Without complying with Clause 17, Congress cannot authorize the taking of state land into trust for any reason, without the State's consent or cession, and California retains exclusive jurisdiction over such land.

44. Accordingly, the Decision violates the Constitution, and it is arbitrary, capricious, and contrary to law under 5 U.S.C. § 706.

Third Claim for Relief

(Defendants Have Violated California's Sovereignty Because Neither Congress Nor Any Agency of the Federal Government Can, After The Admission Of A State To The Union, Reserve Or Convey Lands That Have Been Bestowed Upon A State, As Once Bestowed The Ownership of Land Is An Incident Of State Sovereignty)

45. Plaintiffs repeat and reallege the allegations in paragraphs 1-44 above.

46. The United States Supreme Court has "emphasized that 'Congress cannot, after statehood, reserve or convey submerged lands that have already been bestowed upon a State'…(T)he consequences of admission are instantaneous, and it ignores the uniquely sovereign character of that event … to suggest that subsequent events somehow can diminish what has already been bestowed'… And that proposition applies *a fortiori* where virtually all of the State's public lands—*not just its submerged ones* are at stake." *Hawaii v. Office of Hawaiian Affairs*, 556 U.S. 163, --- (2009) (emphasis added).

47. As the Decision itself makes clear, before the Tribe purchased Camp 4 and before the Decision, Camp 4 was private property subject to California's sovereignty and laws.

48. Defendants did not obtain California's consent to exercise exclusive or any federal/tribal jurisdiction over Camp 4.

49. The Decision therefore improperly purports to exercise exclusive jurisdiction over State land already bestowed to California. *E.g.*, Decision p.3.

50. Accordingly, the Decision violates the Constitution and Supreme Court precedent, and it is arbitrary, capricious, and contrary to law under 5 U.S.C. §706.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court enter judgment in favor of Plaintiffs and against Defendants, granting the following relief:

a. Declaring that 40 U.S.C. §3112 is applicable to the actions of Defendants, thereby requiring compliance with the requirements of §3112(b) should the Defendants desire the Government to have jurisdiction; and that until such §3112(b) is complied with and a State Legislative determination regarding jurisdiction (granting exclusive, some or none at all) occurs, the State of California retains exclusive legislative jurisdiction over Camp 4;

b. Declaring that each and every portion of the Decision which gives or implies that the Defendants and/or the Tribe have any jurisdiction over Camp 4 is unenforceable;

c. Declaring the agency action with respect to declaring that jurisdiction has been transferred to, or can be transferred to the Defendant Agency, or the Tribe and eliminating the jurisdiction of the State of California is contrary to law within the meaning of 5 U.S.C. §706(2)(A).

d. Declaring the agency action to be contrary to the United States Constitution Article I, Section 8, Clause 17 and accordingly "contrary to constitutional right, power, privilege or immunity" as required by 5 U.S.C §706(2)(B), in that no consent or cession has been obtained from the Legislature of the State of California to the transfer to the Government of any jurisdiction.

e. Declaring that the United States Supreme Court case law interpreting Clause 17, and the history of the adoption of Clause 17 make clear that Clause 17

applies to this agency action, and that the consent of the Legislature of the State of California, if any, and to each and every limitation set by the Legislature in such consent is within the sovereign power of the Legislature of the State of California, including the right to impose the requirement that all of the legislation of the State apply to the Camp 4 Land, including the right of taxation of the real estate, in any such consent.

f. Declaring that Camp 4 is state sovereign land, made such by the Act of Admission of the State of California to the United States, that such sovereign right cannot be withdrawn by the Congress of the United States or any agency or agent of the United States from such state sovereignty without compliance with all of the requirements and limitations of Clause 17; that the failure to so comply with Clause 17 was "arbitrary, capricious, … and otherwise not in accordance with law".

g. Declaring that the Act of Admission of the State of California did not withhold jurisdiction over Indian land for the federal government, and such failure to do so ceded sovereign jurisdiction to the State of California, thereby making applicable the requirements of Clause 17.

h. Declaring that Congress cannot declare previously granted sovereign state land as no longer sovereign unless there is first compliance with Clause 17.

i. Declaring that the Indian Commerce Clause is limited by Clause 17, and therefore does not enable the Congress, in dealing with the Indian Tribes, to declare state sovereign land free and clear of Clause 17.

j. Declaring that 5 U.S.C. §706 applies to the Defendants and the agency action so that any portion of the Decision which removes jurisdiction from the State of California over Camp 4, and/or grants any jurisdiction to the Tribe is contrary to law and to the Constitution.

k. Awarding Plaintiffs their costs and disbursements, together with

reasonable attorney's fees to the extent permitted by law; and

l. Granting Plaintiffs such other and further relief as this Court deems just, equitable, and proper.

DATED: October 4, 2017 BY: _/S/_____

Lewis P. Geyser
Attorney for Plaintiffs
Lewis P. Geyser, Robert B. Corlett and T. Lawrence Jett

EXHIBIT A

United States Department of the Interior

IN REPLY REFER TO:

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

DEC 24 2014

NOTICE OF DECISION

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

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

Dear Chairman Armenta:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Factor 1 - Need for Additional Land

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Factor 2 - Proposed Land Use

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

National Environmental Policy Act Compliance

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

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

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

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

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

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

Conclusion

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

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

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

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

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

Sincerely,

Amy Dutschke

Regional Director

Enclosure:
43 CFR 4.310, et seq.

cc: Distribution List

EXHIBIT B

ASSISTANT SECRETARY – INDIAN AFFAIRS
UNITED STATES DEPARTMENT OF THE INTERIOR

BRIAN KRAMER AND SUZANNE KRAMER,	)
COUNTY OF SANTA BARBARA, CALIFORNIA	)
NO MORE SLOTS,	)
LEWIS P. GEYSER AND ROBERT B. CORLETT,	)
PRESERVATION OF LOS OLIVOS,	)
SANTA YNEZ VALLEY CONCERNED CITIZENS,	)
ANNE (NANCY) CRAWFORD-HALL,	)
and SANTA YNEZ VALLEY ALLIANCE,	)
APPELLANTS,	)
	)
v.	)
	)
PACIFIC REGIONAL DIRECTOR,	)
BUREAU OF INDIAN AFFAIRS,	)
APPELLEE.	)
	)
	)

Decision

Brian Kramer and Suzanne Kramer, the County of Santa Barbara, California, No More Slots ("NMS"), Lewis P. Geyser and Robert B. Corlett, Preservation of Los Olivos ("POLO"), Santa Ynez Valley Concerned Citizens ("SYVCC"), Anne (Nancy) Crawford-Hall, and the Santa Ynez Valley Alliance ("SYVA") (collectively "Appellants") appealed to the Interior Board of Indian Appeals ("Board") the December 24, 2014 decision ("Decision") of the Regional Director ("Regional Director"), Pacific Region, Bureau of Indian Affairs ("BIA") to take approximately 1,427.28 acres of land located in Santa Barbara County, California into trust for the Santa Ynez Band of Chumash Indians ("Tribe") under Section 5 of the Indian Reorganization Act of 1934 ("IRA"). Pursuant to 25 C.F.R. § 2.20 and the November 12, 2013, memorandum entitled, "Assumption of Jurisdiction over certain appeals of fee-to-trust decisions to the Interior Board of Indian Appeals pursuant to 25 C.F.R. § 2.4(c)," my office assumed jurisdiction over the appeal.

As an initial matter, I dismiss the appeals of Appellants POLO, SYVCC, NMS, SYVA, and Messrs. Geyser and Corlett for lack of standing. However, to avoid additional delay, I examine the merits of the case as raised by these Appellants. I also grant the Regional Director's Motion to Strike the amicus curiae brief belatedly filed by Save the Valley on April 1, 2016.

Appellants argue that the Regional Director failed to address correctly and adequately the factors set out in 25 C.F.R. § 151.11 for off-reservation fee-to-trust acquisitions. They contend

factors set out in 25 C.F.R. § 151.11 for off-reservation fee-to-trust acquisitions. They contend that there is insufficient support in the record for the Decision, and that it should be set aside and remanded. Appellants also argue that the exercise of the Secretary's land-into-trust authority under Section 5 of the IRA is unconstitutional or otherwise unlawful. Citing to *Carcieri v. Salazar*,[1] Appellants believe that the Tribe was not under Federal jurisdiction in 1934 and is thus ineligible to have land placed into trust under Section 5 of the IRA. Appellants argue further that the Regional Director failed to comply with the National Environmental Policy Act ("NEPA"). Finally, Appellants allege that the Regional Director's decision-making and the NEPA compliance process were tainted by bias and a conflict of interest, and violated due process principles.

For the reasons below, I affirm the Regional Director's Decision. I conclude that the Regional Director gave sufficient consideration to the regulatory criteria contained in 25 C.F.R. § 151.10, and that the Decision was reasonable and supported by the record. Further, I conclude that BIA conducted the appropriate level of review under NEPA.

Statutory and Regulatory Background

Congress enacted the IRA in 1934 to encourage tribes "to revitalize their self-government," to take control of their "business and economic affairs," and to assure a solid territorial base by "put[ting] a halt to the loss of tribal lands through allotment."[2] The IRA "establish[ed] machinery whereby Indian tribes would be able to assume a greater degree of self-government, both politically and economically."[3] Section 5 of the IRA authorizes the Secretary of the Interior, in her discretion, to acquire land in trust for Indian tribes and individual Indians.[4] The authority to acquire lands in trust for Indian tribes is an important tool for the United States to effectuate its longstanding policy of fostering tribal self-determination. The Department has used this tool to help restore tribal homelands and has encouraged Regional Directors to take land into trust for tribes, when appropriate.

Although the Department is in favor of land into trust for tribes in general, we take a very deliberative approach to each specific application and must follow certain rules that the Department has imposed upon itself. The fee-to-trust regulations at 25 C.F.R. Part 151 establish procedures and substantive criteria to govern the Secretary's discretionary authority to acquire land in trust. Proposed acquisitions located within the boundaries of a tribe's reservation are evaluated by BIA pursuant to 25 C.F.R. § 151.10; off-reservation acquisitions are evaluated pursuant to 25 C.F.R. § 151.11, which includes the factors set forth in § 151.10 plus two additional requirements. For purposes of determining which section applies— § 151.10 or §

[1] 555 U.S. 379 (2009).

[2] *Mescalero Apache Tribe v. Jones*, 411 U.S. 145, 151 (1973).

[3] *Morton v. Mancari*, 417 U.S. 535, 542 (1974).

[4] 25 U.S.C. § 465; Felix Cohen, Cohen's Handbook of Federal Indian Law § 15.07 (Nell Jessup Newton, et al. eds., 2012).

151.11— the definition of "reservation" is not limited to a tribe's present-day reservation boundaries but, "where there has been a final judicial determination that a reservation has been disestablished or diminished, *Indian reservation* means that area of land constituting the former reservation of the tribe as defined by the Secretary."[5] The criteria found in § 151.10 are:

> (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;
> (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;
> (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; and
> (h) The extent to which the applicant has provided information that allows the Secretary to comply with 516 DM [Departmental Manual] 6, appendix 4, [the] National Environmental Policy Act (NEPA)[6] Revised Implementing Procedures, and 602 DM 2, Land Acquisitions: Hazardous Substances Determinations.[7]

In addition to the applicable on-reservation Part 151 regulations, the BIA must also comply with NEPA, by conducting either a categorical exclusion determination (CE); an environmental assessment (EA) with a finding of no significant impact (FONSI); or an environmental impact statement (EIS), as applicable to the proposed action.[8]

Factual and Procedural Background

The Tribe submitted a fee-to-trust application for the Property to the BIA Pacific Regional Office on June 27, 2013.[9] The Tribe supplemented its application in July of 2013.[10] The Regional Director approved the Tribe's "Land Consolidation and Acquisition Plan," also known as the "Tribal Consolidation Area" or "TCA" plan in June 2013, which was appealed by multiple parties to the Interior Board of Indian Appeals (IBIA).[11] The IBIA vacated approval of the TCA plan and dismissed the appeals as moot after the Tribe withdrew the TCA plan.[12] The

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[5] 25 C.F.R. § 152(f).

[6] *See generally* National Environmental Policy Act, 42 U.S.C. § 4332.

[7] *See generally* 25 C.F.R. § 151.10(a)-(c) and (e)-(h). (Section 151.10(d) is applicable only to acquisitions for individual Indians.)

[8] *See generally* 40 C.F.R. § 1501.4.

[9] AR0030

[10] AR0032

[11] ARO194.1908-15

[12] *Id.*

Tribe submitted an amended fee-to-trust application in November 2013.[13]

The BIA determined that an Environmental Assessment ("EA") was appropriate after an initial assessment of potential impacts did not support the more rigorous environmental analysis of an EIS. The BIA prepared its EA pursuant to the National Environmental Policy Act (NEPA) in August 2013.[14] The BIA published a Notice of Availability for the initial EA and invited comments through an extended comment period ending on November 18, 2013.[15] In response to comments and changes in the plan for development of Camp 4, BIA conducted another EA. A final, revised EA was published in May 2014 through a Notice of Availability, and comments on the revised EA were accepted through an extended comment period ending on July 14, 2014.[16]

Based on the EA, the comments submitted, the response to comments on both EAs, the impacts to the environment and resources identified in the EA, and mitigation required to reduce significance, the BIA Regional Director concluded that the EA was sufficient and an EIS was not required. As a result, a FONSI was issued on October 23, 2014 and made available for public review.[17] The BIA issued its Decision on December 24, 2014.[18] Subsequently, the BIA mailed copies of the Decision to interested parties known to it and published notice of the Decision in two local newspapers.[19] In the Decision, the Regional Director stated that the "proposed federal action to approve the Tribe's request to acquire the proposed 1,411 acres plus rights of way into trust . . . does not constitute a major federal action what would significantly affect the quality of the human environment."[20] The Regional Director stated that the information used by the BIA to analyze the proposed development on Camp 4 was an appropriate baseline for analyzing potential impacts under NEPA, and that all identified impacts had been addressed by the EA.[21]

Appellants timely appealed the Decision to the IBIA.[22] On January 20, 2015, the Office of the Assistant Secretary – Indian Affairs assumed jurisdiction over the appeals of the County of Santa Barbara, California, NO MORE SLOTS, Lewis P. Geyser and Robert B. Corlett, Brian Kramer and Suzanne Kramer, and Preservation of Los Olivos.[23] On February 9, 2015, the Office of the Assistant Secretary – Indian Affairs assumed jurisdiction over the appeals of Santa Ynez Valley Concerned Citizens, Ann (Nancy) Crawford-Hall (also representing the entities San

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[13] AR0080.00009

[14] AR0131.00001.

[15] *See id.*

[16] AR194.00001; AR0213.00001.

[17] AR0237.00001; AR0243.00001.

[18] AR0123.00001.

[19] AR0124-AR0125.

[20] AR0237.00022.

[21] *See* AR194.01688-90; AR237.00428-29.

[22] This office decided timeliness of appeal from Geraldine Shepherd.

[23] January 30, 2015 Memo to IBIA.

Lucas Ranch LLC and Holy Cow Performance Horses LLC), and the Santa Ynez Valley Alliance.[24] The Office of the Assistant Secretary consolidated the eight appeals.[25]

On April 13, 2015, the Regional Director provided Appellants, the Assistant Secretary, and the Tribe with a digital copy of the administrative record (AR). At the request of some Appellants, the Regional Director provided each of the Appellants, the Assistant Secretary, and the Tribe with a second copy of the AR that contained searchable PDFs with each page numbered.

The briefing schedule was originally ordered on April 28, 2015.[26] Briefing was stayed on June 24, 2015 to allow for briefing on the timeliness of a ninth appeal by Geraldine Shepherd.[27] The Shepherd appeal was dismissed as untimely on October 14, 2015.[28] After dismissing the Shepherd appeal, briefing was resumed on December 2, 2015. Opening briefs were due on December 31, 2015; response briefs on February 1, 2016, and reply briefs due 15 days after response briefs were submitted.[29] On December 15, 2015, the Regional Director and Tribe filed a Joint Request for Enlargement of Page Limits, which was granted on January 21, 2016.[30]

On March 7, 2016, Appellants Brian Kramer and Suzanne Kramer simultaneously submitted a Request to Submit a Supplemental Reply Brief and a Supplemental Reply Brief.[31] The Kramers alleged that the supplemental reply brief was necessary because they had learned of newly disclosed information provided by the Tribe at a March 3, 2016 public meeting.[32] On March 10, 2016 the Tribe submitted its response in opposition to the Kramers' request, stating that the map at issue in the Kramers' supplemental reply brief contained errors that had since been corrected, negating the need for a supplemental reply brief.[33] On March 11, 2016, the Kramers submitted a Reply to the Tribe's Response in opposition to request for Supplemental Briefing.[34] The County of Santa Barbara also filed a Supplemental Reply Brief on

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[24] February 9, 2015 memo to IBIA.

[25] *Id.*

[26] Order Setting Briefing Schedule (April 28, 2015).

[27] *See* Order Staying Briefing Schedule (June 24, 2015).

[28] *See* Order Dismissing Appeal (October 14, 2015).

[29] *See* Order to Resume Briefing and Setting Briefing Schedule (December 2, 2015).

[30] *See* Order Granting Request for Enlargement of Page Limits (January 21, 2016).

[31] *See* Request of Appellants, Brian Kramer and Suzanne Kramer, to Submit a Supplemental Reply Brief to Responses of Pacific Regional Director and Santa Ynez Band of Chumash Indians Due to Newly Discovered Information (March 7, 2016).

[32] *Id* at 2.

[33] *See* Santa Ynez Band of Chumash Mission Indians' Response to Motion of Appellants to File Supplemental Reply (March 10, 2016).

[34] *See* Reply of Appellants, Brian Kramer and Suzanne Kramer, to Response of Santa Ynez Band of Chumash Indians to Appellants' Supplemental Reply Brief (March 11, 2016).

March 11, 2016.[35]

On March 18, 2016, the Acting Assistant Secretary granted the Kramers' request to file a Supplemental Reply Brief and invited other parties to file a response by April 1, 2016.[36] Appellants Santa Ynez Valley Concerned Citizens, Anne Crawford-Hall, and No More Slots submitted Supplemental Response Briefs on April 1, 2016.[37]

Save the Valley, LLC, which is not a party to this appeal, submitted an Amicus Curiae Brief in Support of Appellants on April 1, 2016.[38] Save the Valley, LLC did not file a motion to request to submit its Amicus Curiae Brief. The amicus curiae brief contained a complaint filed by Save the Valley, LLC's in the United States District Court for the Central District of California in a case concerning the decision subject to this appeal.[39] On April 13, 2016, the Regional Director submitted a Motion to Strike Save the Valley, LLC's Amicus Curiae Brief in Support of Appellants.[40]

Discussion

I. Standing of Appellants Preservation of Los Olivos, Santa Ynez Valley Concerned Citizens, No More Slots, Santa Ynez Valley Alliance, and Messrs. Geyser and Corlett

I operate in the same capacity as the Board when reviewing whether a party has standing. I, therefore, adopt the same standards that the Board employs in reviewing the parties' briefs and evaluating their standing to appeal. In this case, I have determined that Appellants POLO, SYVCC, NMS, SYVA, and Messrs. Geyser and Corlett lack standing, and, therefore, dismiss their appeals.

The Board's regulations incorporate the doctrine of standing, which requires that a party seeking to appeal from a BIA decision show that he or she is an "interested party" whose own legally protected interest was adversely affected by the agency decision being appealed.[41] The Board has held that its standing requirements correspond to the requirements of constitutional standing. An appellant must make a showing of an actual or imminent, concrete and

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[35] *See* Appellant County of Santa Barbara's Supplemental Reply Brief in Support of Appeal of December 24, 2014 Notice of Decision (March 11, 2016).

[36] *See* Order Regarding Appellants' Supplemental Reply Brief (March 18, 2016).

[37] *See* Response Supplemental Response Briefs of Santa Ynez Valley Concerned Citizens, Anne Crawford-Hall, and No More Slots (April 1, 2016).

[38] *See* Save the Valley, LLC's Amicus Curiae Brief in Support of Appellants (April 1, 2016).

[39] *Id.*

[40] *See* Motion to Strike Save the Valley, LLC's Amicus Curiae Brief in Support of Appellant's (April 13, 2016).

[41] *Pres, of Los Olivos v. Pacific Reg'l Director*, 58 IBIA 278, 296-97 (2014).

particularized injury to the appellant's legally protected interests, which was caused by the BIA decision being appealed, and which can be redressed by a Board decision, *e.g.*, by setting aside the challenged decision.[42] For an appellant to show that he or she is injured by the BIA decision, the alleged injury must be causally connected with or fairly traceable to the actions of BIA, and not caused by the independent action of a third party.[43] Furthermore, for an appellant to demonstrate that his or her injury can be redressed, the appellant must show that it is likely, rather than merely speculative, that the injury will be redressed by a favorable decision of the Board.[44]

Lastly, 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."[45] Appellants have the burden to demonstrate that their interests, as identified through their members and sought to be protected in these appeals, are germane to them as organizations.[46]

It is important to highlight that it is not enough for Appellants simply to allege that they have prudential standing by virtue of the U.S. Supreme Court's decision in *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak*.[47] That decision does not grant every individual and every organization standing to appeal the Decision. Appellants must still meet all of the elements of constitutional standing, as emphasized by the Board, and may not circumvent those requirements. I evaluate below the standing of five of the Appellants to appeal the Regional Director's Decision.

A. Preservation of Los Olivos (POLO)

In its opening brief, POLO identifies itself as a "community group," but makes no mention of its standing to appeal the Decision.[48] The organization does not identify its interests or any purported injury to them. Additionally, in its reply brief, POLO makes the conclusory assertion that it is an "interested party" under the Department's regulations, but does not state how its interests are "adversely affected" by the Regional Director's Decision.[49] POLO cannot

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[42] *Id.*

[43] *See Skagit County, Washington v. Northwest Regional Director*, 43 IBIA 62, 71 (2006) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992)).

[44] *See Garcia v. Western Regional Director*, 62 IBIA 43, 49 (2015) (citing *Lujan*, 504 U.S. at 561).

[45] *Pres. of Los Olivos*, 58 IBIA at 282 n.6.

[46] *See id.* at 305.

[47] 132 S. Ct. 2199 (holding that the plaintiff's interests fell within the zone of interests of the IRA and therefore had prudential standing to challenge a trust acquisition).

[48] POLO Opening Brief at 2.

[49] POLO Reply Brief at 4 (citing 25 C.F.R. §§ 2.1 to 2.21). POLO suggests that it is not required to show that it has

meet the longstanding requirements of judicial standing simply by noting a timely administrative appeal. Because POLO has not alleged any injury in this instance, I find that it lacks standing to pursue its appeal.[50]

B. Santa Ynez Valley Concerned Citizens

Appellant SYVCC likewise did not address its standing to appeal the Decision in its opening brief. In a reply brief, SYVCC claims for the first time that it has standing because "the views from, and the air quality surrounding, SYVCC member's [sic] property would be affected by the contemplated housing, utilities and wastewater facilities permitted by the acquisition."[51] It additionally believes that development on the parcel "may have a similar detrimental effect on their enjoyment and use of their property."[52] SYVCC asserts that the proposed acquisition may hamper its members' ability to use roadways on or near the subject property.[53] In support of its alleged injury, SYVCC included with its reply brief a declaration from Gregory Simon, a Director of SYVCC, in which he states that he lives 10,000 feet from Camp 4, and that the acquisition would greatly affect the views from, and the air quality surrounding his property."[54]

In this instance, SYVCC has not adequately alleged an injury in fact, the first element of standing as required by the Supreme Court in *Lujan*. The harms that SYVCC alleges, particularly pollution, environmental impacts, and the inability to use certain roads, are speculative. The Appellant has put forth no evidence demonstrating the likelihood of these events.

Moreover, although Mr. Simon declares that he will suffer the loss of aesthetic enjoyment of the views from his home, the Appellant fails to meet the redressability prong of standing. In other words, SYVCC has not shown that if Camp 4 were not acquired into trust by the Department, there would be no development on the parcel in the future. The Tribe acquired Camp 4 in a free market, arm's length transaction, and presumably would be able to develop the

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judicial standing to appeal the decision. *See id.* However, the Board has previously told POLO and has held that administrative standing for purposes of these regulations are coextensive with principles of judicial standing. *See Pres. of Los Olivos*, 58 IBIA at 296-97.

[50] Citing a federal district court case to which it was a party, POLO argues that "it has already been determined" that it has standing "in these circumstances." POLO Rep. Br. at 5 (citing *Pres. of Los Olivos v. U.S. Dep't of the Interior*, 635 F. Supp. 2d 1076, 1085-89 (C.D. Cal. 2008). This is inaccurate. In *Preservation of Los Olivos*, the U.S. District Court for the Central District of California did not reach the question of whether POLO had standing to challenge a BIA decision and instead remanded the case to the Board "to render a decision on [POLO's] standing that specifically accounts for its regulations governing administrative appeal and any other factors that it deems relevant to the determination of standing." *Pres. of Los Olivos*, 635 F. Supp. at 1085.

[51] SYVCC Opening Br. at 2.

[52] *Id.*

[53] *See id.*

[54] *See* Declaration of Gregory M. Simon in Support of Appeal of Appellant Santa Ynez Valley Concerned Citizens, at 1.

project site in some fashion through other means, regardless of its trust status. There may, of course, also be development on other owners' properties near Mr. Simon's home, which could likewise interrupt his views. In fact, the BIA explicitly noted that the design and density of the proposed development is not inconsistent with residential developments surrounding portions of the Property, and that placement of the development within the Property to create buffers and retain open spaces will reduce the impact of the development on surrounding properties.[55] Because SYVCC has failed to demonstrate that it will suffer an actual and imminent injury in fact that could be redressed by a favorable decision, I conclude that it lacks the requisite constitutional and organizational standing to appeal.[56]

C. No More Slots (NMS)

Appellant NMS also has failed to demonstrate that it has standing to appeal the Decision. In its opening brief, NMS makes the conclusory statement that it is "an unincorporated community Association of citizens and residents of the Santa Ynez Valley impacted negatively by the unmitigated impacts affecting them and their quality of life by the transfers of fee owned lands, including the 1,427 acre Camp 4 land transfer, into federal Indian trust status."[57] As the Regional Director has observed, NMS fails to show how it fulfills any of the factors of organizational standing.[58] In its reply brief, NMS responds by discussing the Tribe's gaming project, speculating that gaming and commercial development may occur on the Property, and insinuating that traffic may increase in the area.[59]

NMS does not have standing to challenge the Decision under any theory. It has failed to meet the requirements of constitutional standing and standing as an organization. In particular, NMS has not explained how any one of its members will be individually injured by the Decision relating to the Camp 4 Property. It is insufficient for NMS to assert generally that it dislikes the Tribe's gaming operations elsewhere. Moreover, NMS' allegations that the Property may be used for purposes other than those in the Tribe's application are purely speculative and not supported by the Administrative Record. Accordingly, I dismiss NMS' appeal for lack of standing.[60]

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[55] *See* AR at 194.01700-02.

[56] I also have doubts as to whether Mr. Simon has a legally protected interest in the views from his home nearly two miles away from the Property. Projected harms such as these onto SYVCC's members are generalized, and the alleged loss of enjoyment and use of their property do not amount to a cognizable injury in fact.

[57] NMS Opening Brief at 1.

[58] Regional Director Response Brief at 4.

[59] NMS Reply Brief at 7.

[60] NMS' terse invocation of the Supreme Court's decision in *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak* has no bearing on whether it fulfills the requirements of standing, which are bedrock principles of constitutional law. *See* NMS Reply Brief at 7.

D. Santa Ynez Valley Alliance (SYVA)

SYVA has not shown that it will suffer an injury resulting from the Decision or that it has organizational standing to continue its appeal. In its opening brief, SYVA fails to address its standing as an organization and, like POLO, asserts without any explanation that "[t]he Alliance may appeal this case, as an interested party that is affected by BIA's decision and could be adversely affected by the decision in this appeal."[61] In its reply, SYVA later alleges that its "members' lives as Santa Ynez Valley residents will be significantly less enjoyable due to the degradation of the rural character and biological resources of the area."[62] It attached a Declaration from Charles Mark Oliver, the organization's President, who expressed concerns that his aesthetic enjoyment of the valley will be negatively impacted by the Decision.[63]

SYVA's purported injury amounts to nothing more than a generalized grievance against the Regional Director's action. In other words, its concerns relate broadly to any development in the entire Santa Ynez Valley, and SYVA has not alleged a particularized injury with respect to the specific parcel that is the subject of these appeals. Furthermore, SYVA has failed to meet the causation and redressability prongs of constitutional standing: SYVA, through its declarant Mr. Oliver, does not indicate how the trust acquisition of Camp 4 directly impacts its members' enjoyment of the valley or how setting aside the Decision would prevent other development elsewhere in the valley. As with some of the other Appellants here, SVYA's apprehensions about commercial development on the Property are merely speculative.[64] I therefore conclude that SYVA lacks the requisite constitutional and administrative standing in this case.

E. Messrs. Geyser and Corlett

Lastly, the appeal of Appellants Geyser and Corlett must be dismissed for failure to demonstrate their constitutional standing. These Appellants, who are "nearby property owners" assert baldly that "[t]hey have prudential standing under the Administrative Procedure Act to challenge the Decision because they will suffer alleged economic, environmental, and aesthetic harms falling within the zone of interests protected by law."[65] However, they fail to address the mandatory elements of constitutional standing. At minimum, these Appellants neglect to explain in any detail which legally protected interests of theirs will be specifically harmed by the

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[61] SYVA Opening Brief at 1.

[62] SYVA Reply Brief at 5.

[63] *See* Declaration of Mark Oliver at 1-5.

[64] I likewise find that Mr. Oliver's statement that "[t]he public's ability to have a voice in how the Camp 4 property is developed will be completely eliminated if the property is accepted into trust" is baseless. *Id.* at 3. Mr. Oliver does not maintain a cognizable interest in the "public process" or how other parties in his valley may use their property. *Id.*

[65] Geyser and Corlett Opening Brief at 2.

Decision. For example, Appellants Geyser and Corlett do not state how far they live from Camp 4, nor do they allege that they have even seen or used Camp 4. In addition, they may not raise the rights or interests of another party to establish standing, namely the State of California.[66] Because Appellants Geyser and Corlett have not adequately shown any injury resulting from the Decision, I conclude that they lack standing to challenge it.

II. Standard of Review

To avoid further delay in reaching an outcome in this case, I review below the merits of this matter as raised by the Appellants. The Board's standard of review in trust acquisition cases is well established and I have adopted the Board's standard for this process.[67] In keeping with the Board's standards, I will not substitute my judgment for that of the Regional Director's in reviewing fee-to-trust decisions.[68] Instead, I will review fee-to-trust decisions over which my office has assumed jurisdiction to determine whether the Regional Director gave proper consideration to all legal prerequisites to exercise the Secretary's discretionary authority to take land into trust.[69] An appellant bears the burden of proving that the Regional Director did not properly exercise her discretion.[70] Simple disagreement with or bare assertions concerning the BIA's decisions are insufficient to carry this burden of proof.[71]

Likewise, review of BIA's EA and FONSI consists of determining whether such EA and FONSI are "supported by the record" and whether "they articulate a rational connection between the facts found and the choice made."[72] Generally, the task is not to "second-guess BIA's determination of how much discussion to include on each topic in a NEPA document, and how much data is necessary to fully address each issue."[73] Instead, I "evaluate the EA and FONSI to determine if they collectively contain a 'reasonably thorough discussion of the significant aspects

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[66] The Appellants' reliance on *Bond v. United States* is misplaced. *See* Geyser and Corlett Reply Brief at 2-4 (citing 564 U.S. 211 (2011)). In that case, the Supreme Court concluded that the petitioner had standing to mount a Tenth Amendment challenge to a criminal statute under which she pleaded guilty and was sentenced, not that parties always have standing to assert the interests of states. *See* 564 U.S. at 221-283. In any event, Messrs. Geyser and Corlett are not absolved of their responsibility to demonstrate that they will suffer an injury in fact resulting from the Decision.

[67] *Valley Coal. v. Pac. Reg'l Dir., Bureau of Indian Affairs*, Decision of the Assistant-Secretary Indian Affairs, U.S. Department of the Interior at 5 (August 14, 2015).

[68] *Shawano Cnty v. Acting Midwest Reg'l Dir.*, 53 IBIA 62, 68 (2011); *Arizona State Land Dep't v. Western Reg'l Dir.*, 43 IBIA 158, 159-60 (2006).

[69] *Shawano Cnty.*, 53 IBIA at 68.

[70] *Id.* at 69; *Arizona State Land Dep't*, 43 IBIA at 160; *State of South Dakota v. Acting Great Plains Reg'l Dir.*, 39 IBIA 283, 291 (2004), *aff'd sub nom. South Dakota v. U.S. Dep't of the Interior*, 401 F. Supp. 2d 1000 (D.S.D. 2005), *aff'd*, 486 F.3d 548 (8th Cir. 2007).

[71] *Shawano Cnty.*, 53 IBIA at 69; *Arizona State Land Dep't*, 43 IBIA at 160.

[72] *Pres. of Los Olivos*, 58 IBIA at 306 (*citing Voices for Rural Living v. Acting Pac. Reg'l Dir.*, 49 IBIA 222, 240 (2009)).

[73] *Voices for Rural Living*, 49 IBIA at 240.

of the probable environmental consequences' of BIA's action."[74]

The BIA's land acquisition policy permits land to be acquired in trust for individual Indians or a tribe pursuant to an act of Congress in conjunction with approval by the Secretary.[75] Section 151.3(a) outlines three circumstances in which tribes may acquire trust land: "(1) [w]hen the property is located within the exterior boundaries of the tribe's reservation or adjacent thereto; or within a tribal consolidation area; or (2) [w]hen the tribe already owns an interest in the land; or (3) [w]hen the Secretary determined that the acquisition of the land is necessary to facilitate tribal self-determination, economic development, or Indian housing."[76] These are longstanding regulations, having been in place in their current form for approximately 20 years. The land acquisition policy in § 151.3(a)(l)-(3) is disjunctive.[77] In other words, any of these circumstances is an adequate predicate for the acquisition in trust.

When evaluating tribal applications for trust acquisitions the record must show the Regional Director considered the criteria set forth in 25 C.F.R § 151.10, but "there is no requirement that the BIA reach a particular conclusion with respect to each factor."[78] The factors need not be "weighed or balanced in any particular way or exhaustively analyzed."[79] However, it must be discernable from the Regional Director's decision, or at least from the record, that due consideration was given to timely submitted comments by interested parties.[80]

In contrast to the Board's, and hence my, limited review of BIA discretionary decisions, the Board has full authority to review any legal issues raised in a trust acquisition case, except those challenging the constitutionality of laws or regulations, which the Board and I lack authority to adjudicate.[81] An appellant bears the burden of proving that the BIA's decision was in error or not supported by substantial evidence.[82]

III. Constitutionality and Legality of 25 U.S.C. § 465

Various Appellants have argued that the Secretary's exercise of her land-into-trust

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[74] *Pres. of Los Olivos & Pres. of Santa Ynez*, 58 IBIA 278, 306 (*citing Voices for Rural Living v. Acting Pac. Reg'l Dir.*, 49 IBIA at 240).

[75] *See* 25 C.F.R. § 151.3(a).

[76] 25 C.F.R. § 151.3(a)(1)-(3).

[77] *New York; Franklin Cnty.; & Fort Covington v. Acting E. Reg'l Dir., Bureau of Indian Affairs*, 58 IBIA 323, 336 n.18 (2014).

[78] *Shawano Cnty.*, 53 IBIA at 68-69; *Arizona State Land Dep't*, 43 IBIA at 160.

[79] *Shawano Cnty.*, 53 IBIA at 69. *See Cnty. of Sauk, Wis. v. Midwest Reg'l Dir.*, 45 IBIA 201, 206-07 (2007), *aff'd sub nom. Sauk Cnty. v. U.S. Dep't of the Interior*, No. 07-543, 2008 WL 2225680 (W.D. Wis. May 29, 2008).

[80] *Vill. of Hobart, Wis. v. Midwest Reg'l Dir.*, 57 IBIA 4, 13 (2013).

[81] *Shawano Cnty.*, 53 IBIA at 69.

[82] *Arizona State Land Dep't*, 43 IBIA at 160; *Cass Cnty., Minn. v. Midwest Reg'l Dir.*, 42 IBIA 243, 247 (2006).

authority under Section 5 of the IRA is unconstitutional or violates other laws.[83] The Board has held that it lacks authority to determine that a statute is unconstitutional and therefore lacks jurisdiction to consider those arguments.[84] Like the Board, I am required to comply with Federal statutes and regulations, and I lack authority to declare Acts of Congress unconstitutional or unlawful. Therefore, I decline to consider any arguments concerning the constitutionality of Section 5 of the IRA.[85]

I note, however, that courts have consistently upheld the Department's authority to take land into trust, concluding that the purpose and structure of the IRA, as well as its legislative history, sufficiently guide the discretion of the Secretary of the Interior (Secretary) when deciding to acquire land in trust.[86] Courts have cited Section 5's requirement that the land be acquired for Indians, the limitation on authorized funds for acquisitions, and the statutory aims of securing for Indian tribes a land base on which to engage in economic development and self--determination as well as ameliorating the devastating effects of allotment as guiding factors governing review of trust acquisition applications.[87]

IV. Review of the Regional Director's Analysis under 25 C.F.R. § 151.10

Decisions concerning whether to take land into trust are discretionary. Appellants bear the burden of proving that the BIA did not properly exercise its discretion.[88] I conclude that Appellants have not met their burden of showing that the Regional Director failed to properly exercise her discretion, that she committed error, or that the Decision is not supported by substantial evidence. I therefore affirm the Decision.

a. Authority for Acquisition - 25 C.F.R. § 151.10(a)

Section 151.10(a) requires the BIA to consider the "existence of statutory authority for the acquisition and any limitations contained in such authority."[89] Here, the Regional Director

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[83] *See, e.g.*, POLO Opening Brief at 13-16; POLO Reply Brief at 8-9; NMS Opening Brief at 7, 14; Geyser and Corlett Opening Brief at 3-11; Geyser and Corlett Reply Brief at 4-5.

[84] *See, e.g., State of Kansas v. Acting Eastern Oklahoma Reg'l Dir.*, 62 IBIA 225, 237 (2016); *Mille Lacs County, Minnesota v. Acting Midwest Reg'l Dir.*, 62 IBIA 130, 137-38 (2016).

[85] *See South Dakota & Cnty. of Charles Mix v. Acting Great Plains Reg'l Dir., Bureau of Indian Affairs*, 49 IBIA 129, 141 (2009) (*citing Jackson Cnty. v. S. Plains Reg'l Dir.*, 47 IBIA 222, 227-28 (2008); *Arizona State Land Dep't*, 43 IBIA at 160; *Cass Cnty. v. Midwest Reg'l Dir.*, 42 IBIA at 247).

[86] *See e.g., Michigan Gaming Opposition v. Kempthorne*, 525 F.3d 23, 33-34 (D.C. Cir. 2008), *cert. denied*, 555 U.S. 1137 (2009); *South Dakota v. U.S. Dep't of Interior*, 423 F.3d 790, 796-799 (8th Cir. 2005), *cert. denied*, 127 S. Ct. 67 (2006); *Shivwits Band of Paiute Indians v. Utah*, 428 F.3d 966, 972-74 (10th Cir. 2005), *cert. denied*, 549 U.S. 809 (2006).

[87] *See South Dakota v. United States Dep't of Interior*, 423 F.3d at 796–799.

[88] *See, e.g., Shawano Cnty.*, 53 IBIA at 69.

[89] 25 C.F.R. § 151.10(a).

cited the Indian Land Consolidation Act (ILCA), which is an extension of the Secretary's IRA land-into-trust authority to all tribes, as the authority for the trust acquisition of the Property.[90] In considering this factor, the BIA discussed the Tribe's participation in a special election held in 1934 pursuant to Section 18 (25 U.S.C. § 478) of the IRA, in which the majority of the Tribe's voters elected to accept the provisions of the IRA.[91]

Some Appellants now question the Secretary's authority to acquire land in trust for the Tribe. NMS, POLO, and Ms. Crawford-Hall assert that the Secretary lacks authority to acquire land in trust for the Tribe following the United States Supreme Court decision, *Carcieri v. Salazar*.[92] However, this question has already been settled for the Department. In 2012, the Associate Solicitor for the Division of Indian Affairs in the Solicitor's Office concluded that the Supreme Court's decisions in *Carcieri* and *Hawaii v. Office of Hawaiian Affairs*[93] do not limit the Secretary's land-into-trust authority with respect to the Tribe.[94] This determination was incorporated into a June 13, 2012 decision accepting another parcel into trust for the Tribe. Although some of the parties here, namely NMS, POLO, and SYVCC, attempted to appeal the 2012 decision, the Board dismissed their appeal, finding that none of those appellants filed a timely appeal.[95] That prior decision, including the conclusion that the Secretary has authority under the IRA to acquire land in trust for the Tribe, is now final for the Department and not subject to additional administrative review by Appellants.

In any event, controlling law reinforces the Regional Director's authority to acquire land into trust on behalf of the Tribe. In 2013, the Solicitor of the United States Department of the Interior issued an M-Opinion on the meaning of "under federal jurisdiction" for the purposes of the IRA, which stated that "the calling of a Section 18 election for an Indian Tribe between 1934 and 1936 should unambiguously and conclusively establish that the United States understood that the particular tribe was under federal jurisdiction in 1934."[96] The Solicitor's 'M-Opinions'

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[90] *See* AR0123.00003. The Indian Land Consolidation Act makes Section 5 of the IRA applicable to "all tribes," regardless of whether or not they earlier elected to reject its application pursuant to Section 18 of the IRA. 25 U.S.C. § 2202. *See also Carcieri v. Salazar*, 555 U.S. at 394-95 ("§ 2202 by its terms simply ensures that tribes may benefit from § 465 even if they opted out of the IRA pursuant to § 478, which allowed tribal members to reject the application of the IRA to their tribe."). Accordingly, I reject any argument that the Regional Director lacked the requisite authority to take land into trust under ILCA. *See, e.g.*, POLO Opening Brief at 11-12; NMS Opening Brief at 8-9.

[91] *See* AR0123.00003.

[92] 555 U.S. 379 (2009). *See, e.g.*, NMS Opening Brief at 12-22; NMS Reply Brief at 8-9; POLO Opening Brief at 3-11; POLO Reply Brief at 4-5; Crawford-Hall Opening Brief at 7-10; Crawford-Hall Reply Brief at 2-3.

[93] 556 U.S. 163 (2009)

[94] AR0001.00001

[95] *No More Slots v. Pacific Reg'l Dir.*, 46 IBIA 233 (2013)

[96] *See* Solicitor's Opinion M-37029 Memorandum from the Office of the Solicitor, U.S. Dep't of Interior to the Secretary of Interior, The Meaning of "Under Federal Jurisdiction" for Purposes of the Indian Reorganization Act, page 21 (*citing Vill. of Hobart v. Midwest Reg'l Dir.*, 57 IBIA 4 (2013); *Cnty. v. Acting Great Plains Reg'l Dir.*, 56 IBIA 62 (2012); *Shawano Cnty.*, 53 IBIA at 62. *See also* Haas Report (specifying, in part, tribes that either voted to

are binding on all offices of the Department of the Interior, including the Board and me.[97] This M-Opinion further bolsters and supports the Regional Director's reliance on the Tribe's participation in the IRA elections to establish that it was under federal jurisdiction in 1934 and is eligible to have land taken into trust under Section 5 of the IRA. Moreover, the Department's conclusion that an IRA vote is dispositive in demonstrating that a tribe was under federal jurisdiction has been upheld by a Federal district court.[98]

Appellants have not presented any arguments or precedent that undermines the Regional Director's conclusions as to her legal authority. Not only is the question of whether the Department established a reservation for the Tribe wholly irrelevant to whether the Tribe was "under federal jurisdiction in 1934," a federal district court recently recognized that ". . .in 1906, the Bishop executed a deed conveying . . . [p]roperty to the United States for the benefit of the Tribe."[99] Similarly, any argument that the Four Reservations Act bars the trust acquisition also fails.[100] Therefore, I reject Appellants' arguments questioning the BIA's authority to acquire the Property in trust for the Tribe.

b. The Tribe's Need for Additional Land - 25 C.F.R. § 151.10(b)

Interior's fee-to-trust regulations require consideration of the "need of . . . the tribe for additional land."[101] All that Section 151.10(b) requires is for the Regional Director to express the Tribe's needs and conclude generally that IRA purposes are served by the acquisition.[102] The "BIA has broad leeway in its interpretation or construction of tribal 'need' for the land," and "flexibility in evaluating 'need' is an inevitable and necessary aspect of BIA's discretion."[103] Additionally, the Board has held that a tribe need not be landless or suffering financial difficulties to need additional land.[104]

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accept or reject the IRA) (Mar. 12, 2014).

[97] *See generally Chemehuevi Indian Tribe v. Western Reg'l Dir.*, 52 IBIA 192, 209 n.15 (2010)(*citing* 212 Departmental Manual (DM) 13.8(c) (limitation on delegation of authority to Office of Hearings and Appeals)); 209 DM 3.2A(11), 3.3 (delegation of authority to Solicitor); *See* Solicitor's Opinion M-37003 (Jan. 18, 2001) (Sec. Bruce Babbitt, *concurring*).

[98] *See Citizens for a Better Way v. United States DOI*, No. 2:12-CV-3021-TLN-AC, 2015 U.S. Dist. LEXIS 128745, at *54-55 (E.D. Cal. Sep. 23, 2015).

[99] *The Roman Catholic Bishop of Monterrey v. Salomon Cota*, No. CV 15-8065-JFW, slip op. at 2 (C.D. Cal. Jan 8 2016).

[100] *See No Casino in Plymouth v. Jewell*, 136 F. Supp. 3d. 1166, 1190 (E.D. Cal. 2015) (holding that the Act of April 8, 1864, 13 Stat. 39, does not prohibit "any reservation land in California acquired as trust property, beyond the four tracts of land designated in the aforementioned Act of 1864 . . ."). As in *No Casino in Plymouth*, the trust acquisition at the focus of this litigation "does not involve the setting aside of a portion of the public domain." Id.

[101] 25 C.F.R. § 151.10(b).

[102] *See South Dakota v. U.S. Dep't of Interior*, 423 F.3d 790, 801 (8th Cir. 2005).

[103] *See New York*, 58 IBIA 323 (*citing Cnty. of Sauk*, 45 IBIA at 209).

[104] *See Cnty. of Mille Lacs v. Midwest Reg'l Dir.*, 37 IBIA 169, 171-72 (2002); *Kansas v. Acting S. Plains Reg'l Dir.*, 36 IBIA 152, 155 (2001); *Avoyelles Parish, La., Police Jury v. E. Area Dir.*, 34 IBIA 149, 153

In the present case, the Regional Director acknowledged that the Tribe's current Reservation lands "are highly constrained due to a variety of physical, social, and economic factors" and that development of new tribal housing is not feasible on any remaining undeveloped property.[105] In particular, the Regional Director found that the acquisition of the Property in trust will meet the following needs: the provision of enough space for tribal housing; the formation of consistent planning, regulatory, and development practices under the jurisdictional control of the Tribe; the establishment of a greater reservation land base to assist with the Tribe's long term needs; the establishment of a land base for future generations and land-banking; the furtherance of self-determination efforts and expansion of the tribal government; and the preservation of cultural resources in the area and the protection of tribal lands.[106] The Regional Director also observed that "placing the property into trust allows the Tribe to exercise its self-determination and sovereignty over the property" and that "[l]and is often considered to be the single most important economic resource of an Indian tribe."[107] As the Regional Director has argued, these stated needs fall squarely within the land acquisition policy of the IRA and the regulatory language of its implementing regulations, which require that land may be acquired for a tribe in trust status "[w]hen the Secretary determines that the acquisition of the land is necessary to facilitate tribal self-determination, economic development, or Indian housing."[108]

The County and the Kramers challenge the Regional Director's consideration of the criterion in Section 151.10(b) on the basis that that the entire acreage of the Property is not necessary for the above stated purposes; that the Regional Director did not consider the approval of other trust acquisitions on behalf of the Tribe; and that the Regional Directory merely reiterated the Tribe's statements with respect to the need for the land.[109] However, the Board has rejected such an inflexible standard: "[A] Tribe is not required to show that trust status for the land is required for the Tribe to achieve its stated needs, much less justify, acre-by-acre, the need for trust status. There simply is not requirement in the IRA or in the regulations that requires the

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(1999); *City of Oneida v. Salazar,* 2009 U.S. Dist. LEXIS 85960, *10-13 (N.D.N.Y Sept. 21, 2009) ("There is nothing, in fact, limiting the reach of the IRA or Section 465 to landless Indians or Indians whose economic life needs rehabilitation."); *Mich. Gaming Opposition,* 525 F.3d 23, 32 (D.C. Cir. 2008) (acknowledging that the IRA was meant, in part, to redress the failures of prior federal Indian policies and the consequent loss of tribal land but recognizing that the IRA and Section 465 were intended to do more than return tribes to the status quo and instead promote self-determination, economic development and self-governance); *Tacoma* v. *Andrus,* 457 F.Supp. 342, 345 (D.D.C. 1978) ("[T]he words of [Section 465] nowhere limit its application to landless, destitute, or incompetent Indians.").

[105] AR0123.00021.

[106] *See* AR0123.0020.

[107] AR0123.00021.

[108] 25 C.F.R. § 151.3(a)(3). *See also* Regional Director Response Brief at 11.

[109] *See* County Opening Brief at 4-5; Kramer Opening Brief at 24.

Tribe to make this showing or for BIA to opine on it."[110] Moreover, "[n]othing in Part 151 requires [a] [t]ribe to limit its vision only to present needs nor, more importantly, does Part 151 permit BIA to second-guess or substitute its judgment for that of the [t]ribe in determining the planned uses for land that is the subject of a trust acquisition application."[111] It was similarly not necessary under these regulations for the Regional Director to examine how the Tribe has used or intends to use other property held in fee or in trust.

POLO and Ms. Crawford-Hall likewise argue that the Regional Director neglected to explain why trust acquisition was necessary to fulfill any of the stated purposes for the Property.[112] POLO goes on to suggest that the Tribe will not be able to realize its need to exercise its own land use control and regulations over the Property.[113] However, the Department's Part 151 regulations simply require the BIA to consider the need for additional land, and not the need for additional trust land.[114] In addition, the regulations do not require the Tribe to demonstrate that its members will relocate from existing housing to Camp 4, as Ms. Crawford-Hall believes.[115] Furthermore, the Board has long established that a tribe is presumed to have jurisdiction over its trust properties, and the Decision correctly presumes that the Tribe can exert civil regulatory jurisdiction over the Property at issue here.[116]

It is not for local governments or other entities to define the Tribe's need, or lack thereof, for the Property.[117] BIA complied with Section 151.10(b) by evaluating how the land acquisition would serve the Tribe's need for additional housing, as well as for purposes of self-determination and land and resource conservation. None of the Appellants' arguments to the contrary warrant reversal of the Decision. Therefore, I conclude that the Regional Director gave appropriate consideration to this criterion, fulfilling its obligations under Section 151.10(b).

C. Purposes for which the land will be used - 25 C.F.R. § 151.10(c)

25 C.F.R. § 151.10(c) requires the Regional Director to consider "[t]he purposes for which the land will be used." The Board has held that the BIA is not required to speculate about

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[110] *State of New York v. Acting Eastern Regional Director*, 58 IBIA 323, 341-42 (2014) (quoting *Shawano County v. Acting Midwest Regional Director*, 53 IBIA 62, 78 (2011) (rejecting the argument that a tribe might actually "require" only 100 out of 400 acres proposed for general purposes such as housing, forestry, parks and recreation, and governmental facilities).

[111] *Shawano County*, 53 IBIA at 79.

[112] *See* POLO Opening Brief at 9; Crawford-Hall Opening Brief at 22-23.

[113] *See* POLO Opening Brief at 16; POLO Reply Brief at 9-10

[114] *Cass County*, 42 IBIA at 247-48; *South Dakota*, 39 IBIA at 292-94.

[115] *See* Crawford-Hall Opening Brief at 23.

[116] *See* Pres. of Los Olivos, 58 IBIA at 313.

[117] *See id.* at 314.

potential future changes in land use under this provision.[118] In this instance, the Regional Director stated that "[t]he Tribe intends to provide tribal housing and supporting infrastructure on a portion of the property."[119] The remainder of the property will be used for economic pursuits, such as vineyards and a horse boarding stable, as well as for the Tribe's long term planning and land banking.[120] In sum, the Regional Director found that the Property "will serve to enhance the Tribe's land base and support tribal housing, infrastructure, and tribal self-determination" as well as serve its cultural, spiritual, and educational needs.[121]

Citing to *Thurston County v. Great Plains Regional Director*,[122] a decision by the Board, the County argues that the Regional Director was additionally required to enumerate each of the Tribe's proposed uses of the Property and ascertain all of its future plans.[123] In that case, the Board found that the Regional Director did not adequately consider the purposes or uses designated by the tribe for six properties, when there were clear discrepancies in the record.[124] Because the County there "identified material inconsistencies between the Regional Director's statements of the proposed uses of each of the properties and the Superintendent's and the Tribe's statements," the Board remanded that portion of the decision back to the agency to explain or the discrepancies.[125] However, in this instance, no such material discrepancies exist, and the Part 151 regulations do not require the Regional Director to "mention" in detail each project proposed by the Tribe.[126] To the contrary, I find that the Decision, along with the rest of the record in this matter, properly considered the "purposes for which the land will be used."[127]

Several Appellants allege that the Regional Director failed to analyze potential gaming or commercial uses of the land and the possibility of additional tribal housing.[128] There is no evidence supporting their assertions in the Administrative Record, and these arguments lack merit. Moreover, the Board has affirmed that "mere speculation that gaming may occur at some future time does not require BIA to consider gaming as a possible use of land being considered for trust acquisition."[129]

Lastly, after briefing concluded in this matter, the Kramers submitted a "Supplemental Reply Brief" regarding a proposed Tribal Land Use Map which appeared at a March 3, 2016

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[118] *See Desert Water Agency*, 59 IBIA at 127.

[119] AR0123.00022.

[120] *See id.*

[121] *See id.*

[122] 56 IBIA 296 (2013).

[123] *See* County Opening Brief at 6; County Reply Brief at 3-4.

[124] *Thurston County v. Acting Great Plains Reg'l Dir.*, 56 IBIA 296, 307-10 (2013).

[125] *Id.* at 297.

[126] County Reply Brief at 4.

[127] 25 C.F.R. § 151.10(c).

[128] *See* POLO Opening Brief at 18-19; NMS Opening Brief at 11-12; SYVCC Opening Brief at 9-13.

[129] *Thurston County v. Acting Great Plains Reg'l Dir.*, 56 IBIA 62, 75 n.15 (2012)

meeting between the Ad Hoc Subcommittee of the Santa Barbara County Board of Supervisors and the Tribe.[130] The map displays shaded portions of the Property and adjacent land owned by the Tribe according to eight different uses, one of which is labeled "General Commercial."[131] In response, the Tribe has asserted that the map "was a conceptual, discussion-only draft prepared in response to a request from the Ad Hoc Committee Chairman."[132] The Tribe also submitted a corrected map, along with a declaration from its Government Affairs Officer stating that the map erroneously purported to show commercial development.[133] Appellants have argued, among other things, that the Regional Director failed to analyze this purpose for the Property, as well.[134] I have no reason to doubt the Tribe's statements that the March 2016 map was drafted in error, and this does not represent a material change in the proposed use of the Property.[135] In any event, iIt is not appropriate for me to consider these materials, because they are not part of the administrative record for the Decision, and were not before the Regional Director at the time of the Decision.[136]

The Decision demonstrates that the Regional Director considered the purposes for which the Property will be used. Her findings, contrary to arguments by the Appellants, are supported by the Administrative Record. Accordingly, I conclude that the Regional Director fulfilled her obligation, as required by section 151.10(c).

D. Impact on State and Local Tax Rolls - 25 C.F.R. § 151.10(e)

Section 151.10(e) provides that, "[i]f the land to be acquired is in unrestricted fee status," BIA must consider "the impact on the State and its political subdivisions resulting from removal of the land from the tax rolls." The Board has rejected the notion that any reduction in the tax base is inherently a significant impact.[137]

In her Decision, the Regional Director concluded that "Santa Barbara County would

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[130] *See* Kramer Supplemental Reply Brief at 2.

[131] *See id.* at Exhibit A.

[132] Tribe Response to Supplemental Replies at 3.

[133] *See id.* at 4.

[134] *See* Kramer Supplemental Reply Brief; Kramer Reply to Tribe's Response to Appellants' Supplemental Reply Brief; County Supplemental Reply Brief; Crawford-Hall Supplemental Response/Reply Brief; SYVCC Supplemental Reply Brief.

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[136] "[T]he test for whether a document, regardless of its precise contents, should be included in the administrative record is straight-forward: the administrative record includes all materials that were 'before the agency at the time the decision was made.'" *Stand Up for California! v. U.S. Dep't of the Interior*, 71 F. Supp. 3d 109, 117-18 (2014) (quoting *James Madison Ltd. by Hecht v. Ludwig*, 82 F.3d 1085, 1095 (D.C. Cir. 1996)) (internal quotations omitted). *See also Am. Wildlands v. Kempthorne*, 530 F.3d 991, 1002 (D.C. Cir. 2008) ("Ordinarily, review is to be based on the full administrative record that was before the Secretary at the time he made his decision.") (internal quotations omitted).

[137] *See State of New York*, 58 IBIA at 343.

experience a de minimis decrease in the amount of assessable taxes in the County by placing the property into trust and removing it from the County tax rolls."[138] Specifically, she noted that the total collectible taxes on the Property for 2012-2013 represented less than 1% of the total amount that the County expects to generate from property taxes.[139] Furthermore, the Regional Director determined that given "the financial contributions provided to the local community by the Tribe through employment and purchases of goods and services," there would be no significant impact resulting from the removal of the Property from the county tax rolls.[140]

The County argues, in effect, that the Regional Director did not consider certain potential tax losses, assuming that the Tribe would not renew a tax reduction contract under California's Williamson Act.[141] However, the Board has reiterated that the BIA is only required to "consider the present impact on the tax rolls of a proposed trust acquisition," not the revenue that might accrue based upon future activities or any other presumptions.[142] The Board has thus stated that "[t]he tax loss associated with a trust acquisition must be considered in relation to the revenue baseline at the time of the acquisition."[143] In accordance with this standard, the Regional Director appropriately found that the percentage of current tax revenue that would be lost by transferring the land into trust would be insignificant in comparison to the total amount of the County's tax rolls.[144] I also conclude that the Regional Director's consideration of the Tribe's contributions to the local community were appropriate when she evaluated the impact of the trust acquisition on the state and local tax rolls.[145]

Appellants Ms. Crawford-Hall and the Kramers marshal the same argument: that BIA did not adequately consider an enhanced tax rate that could occur at some point in the future.[146] However, these parties do not have standing to assert claims on the County's behalf. Even if they were to have standing, their arguments fail for the reasons described above.

In this case, the Regional Director considered the impact of the proposed acquisition on the County's tax rolls, and determined that the impact would be minimal. I thus conclude that

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[138] AR0123.00022.

[139] *See id.*

[140] *See id.*

[141] *See* County Opening Brief at 6-7; County Reply Brief 4-5.

[142] *Desert Water Agency*, 59 IBIA at 127 (citing *Shawano County*, 53 IBIA at 80; *Rio Arriba, New Mexico, Board of County Commissioners v. Acting Southwest Reg'l Dir.*, 38 IBIA 18, 22 (2002); *Benewah County v. Northwest Reg'l Dir.*, 55 IBIA 281, 296 (2012).

[143] *Thurston County*, 56 IBIA at 312 (citing *State of Kansas v. Acting Southern Plains Regional Director*, 53 IBIA 32, 37 (2011))

[144] *See* AR0123.00022. The County additionally argues that the Regional Director did not consider a December 17, 2013 comment letter in opposition to the trust acquisition. *See* County Opening Brief at 6. However, as the Regional Director observes in her brief, the record demonstrates that the Regional Director considered a nearly identical comment letter from the County. *See* AR0075.00001; AR0123.00004.

[145] *See* AR0123.00016, 22.

[146] *See* Crawford-Hall Opening Brief at 23; Kramer Opening Brief at 24.

she adequately considered the tax impact on the County in the Decision and complied with the requirements of 25 C.F.R. § 151.10(e).

E. Jurisdictional Impacts - 25 C.F.R. § 151.10(f)

Under 25 C.F.R. § 151.10(f), the BIA must consider "[j]urisdictional problems and potential conflicts of land use which may arise" from the acquisition of the Property in trust. While these problems and potential conflicts need to be considered, the BIA is not required to resolve these problems or conflicts.[147] BIA, therefore, fulfills its obligation under § 151.10(f) as long as it "undertake[s] an evaluation of potential problems."[148]

The Regional Director in the Decision noted that the Property "is currently zoned AG-II for agricultural uses, with a minimum lot area of 100 acres on prime and non-prime agricultural lands located within the County."[149] She found that the Tribe's intended purposes are not inconsistent with the surrounding uses, and accordingly, the County will not be required to coordinate incompatible uses.[150] In addition, "the County would not have the burden of responsibility of maintaining jurisdiction over the Tribal property."[151] The Regional Director went on to acknowledge that consistent with the manner in which Public Law 83-280 is exercised elsewhere in California, the State would retain criminal jurisdiction over the Property.[152] Finally, the Regional Director highlighted cooperative agreements with and financial contributions to local government offices and community groups.[153]

Appellants POLO, the County, SYVA, Ms. Crawford-Hall, and the Kramers all challenge the Regional Director's consideration of jurisdictional impacts. As an initial matter, these parties, other than the County, have not established standing to assert harms stemming from alleged jurisdictional impacts to the County. If they wanted to seek relief for alleged harms, the parties "must assert its own legal rights and interests, and cannot rest its claim to relief on the legal rights or interests of others."[154] While an organization may bring an appeal on behalf of its

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147 *New York*, 58 IBIA at 346 (*citing Roberts Cnty., South Dakota; State of South Dakota and Sisseton School District No. 54-2; City of Sisseton, South Dakota; and Wilmot School District No. 54-7 v. Acting Great Plains Reg'l Dir., Bureau of Indian Affairs*, 51 IBIA 35, 52 (2009)).

148 *South Dakota v. U.S. Dep't of Interior* 775 F. Supp. 2d 1129, 1143-1144 (D.S.D. 2011) (*citing South Dakota v. U. S. Dep't of Interior*, 314 F. Supp. 2d 935, 945 (D.S.D. 2004) (citing *Lincoln City v. U.S. Dep't of Interior*, 229 F. Supp. 2d 1109, 1124 (D. Or. 2001))).

149 AR0123.00022.

150 *See id.*

151 *Id.*

152 *See* AR0123.00023.

153 *See id.*

154 *Tabeguache/Uncompahgre Indian Tribal Members, and Uinta Indian Tribal Members v. Western Reg'l Dir., Bureau of Indian Affairs*, 59 IBIA 41, 46 (2014) (*citing Thompson v. Great Plains Reg'l Dir.*, 58 IBIA 240, 241 (2014)).

members, if certain requirements are met,[155] one organization, e.g., POLO or SYVA, does not have standing to assert the interests of another organization or municipality, e.g., Santa Barbara County. In this case, the parties other than the County have failed to demonstrate that they have authority to represent, or to seek relief on behalf of, any parties other than themselves.[156] On this basis alone, such claims can be rejected. I nevertheless address their jurisdictional arguments, as none warrant reversal of the Decision.

In particular, POLO claims that the BIA "did not discuss the applicable State and local laws or the impact of removing their requirements and protections."[157] POLO contends that the BIA also failed to compare the State and local laws to tribal laws to ensure protection of the environment and the public at large.[158] POLO additionally believes that BIA ignored applicable federal laws, including those governing federal reserved water rights, and erred in "impl[ying] that the SY Band will have exclusive, governmental control and authority over the land if it is taken into trust."[159]

As discussed above, the Board has long established that a tribe is presumed to have civil and regulatory jurisdiction over its trust properties.[160] With respect to POLO's arguments about State and local laws, nothing in the regulations required the Regional Director to undertake either an examination of all state and local laws or a comparison with tribal laws. Instead, she was only required to consider possible jurisdictional conflicts, and not resolve them. In this case, the Regional Director sufficiently considered these conflicts. In fact, the Decision clearly discusses the State's retention of criminal jurisdiction over the Property.[161] Moreover, the EA and FONSI exhaustively address the relevant environmental laws, as well as tribal reserved water rights.[162]

The County, the Kramers, Ms. Crawford-Hall and SYVA object to the trust acquisition on the basis that development on the Property is incompatible with surrounding uses and land planning and that the Regional Director's conclusion to the contrary is not supported by the record.[163] Appellants also contend that there would be various environmental impacts and that

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[155] *Id.* (*citing Pres. of Los Olivos v. Pacific Reg'l Dir.*, 58 IBIA at 282 n.6).

[156] *Tabeguache/Uncompahgre Indian Tribal Members, and Uinta Indian Tribal Members v. Western Reg'l Dir., Bureau of Indian Affairs*, 59 IBIA 41, 46 (2014) (*citing Thompson v. Great Plains Reg'l Dir.*, 58 IBIA 240, 241 (2014)).

[157] *See* POLO Opening Brief at 17.

[158] *See id.*

[159] Id.

[160] *See Pres. of Los Olivos*, 58 IBIA at 313 (citing *County of San Diego v. Pacific Reg'l Dir.*, 58 IBIA 11, 29 (2013); *Aitkin County, Minnesota v. Acting Midwest Regional Director*, 47 IBIA 99, 106-07 (2008)).

[161] *See* AR0123.00023.

[162] *See, e.g.*, AR194.00047; 36-119; 120-193; 194-204.

[163] *See, e.g.*, County Opening Brief at 8-9; Kramer Opening Brief at 24-25; Crawford-Hall Opening Brief at 23-24; SYVA Opening Brief at 23-24.

the Tribe's cooperation with local government and service providers do not extend to Camp 4.[164]

As with POLO, these Appellants misread the Decision. The Regional Director did not claim that the trust acquisition would result in no jurisdictional issues whatsoever. However, it is clear from the record that the Regional Director considered potential jurisdictional problems and conflicts including those raised by the County in this appeal.[165] As the Regional Director has stated in her brief, the Decision simply summarizes the substantive evaluations in the administrative record, particularly the Final EA's analysis and findings regarding potential land use conflicts.[166] It is especially significant that the Final EA recognized that the development of tribal housing on the Property "would be compatible with the surrounding low density rural residential developments to the north and moderately dense residential development adjacent to the northeastern border of the project site."[167] With regard to the County's concerns that the Tribe's cooperative agreements do not currently extend to the subject Property, the record demonstrates that the Tribe's willingness to enter into such agreements with local governmental entities, as the Regional Director found, serves to at least partially mitigate jurisdictional concerns.[168] Accordingly, the Regional Director properly concluded that the proposed development on the Property would not significantly conflict with surrounding land uses.[169]

Many of the Appellants, including SYVCC, argue that the Regional Director unlawfully accepted into trust certain public roadways not owned by the Tribe or failed to clear title to these easements in accordance with 25 C.F.R. § 151.13, which governs the BIA's title review.[170] The parties do not have standing to raise this claim, as this regulation ensures that that Tribe has marketable title that will be conveyed to the United States.[171] In other words, "the interest protected by § 151.13 is that of the United States, not the land or property interests of third parties that are not being acquired."[172] Moreover, it is entirely speculative whether the acquisition of the Property in trust will actually impact the use of these easements, and the Tribe

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[164] *See, e.g.*, County Opening Brief at 8-9.

[165] I likewise reject the Kramers contention that the typographical error in the section of the Decision addressing 25 C.F.R. § 151.10(f) means that the Regional Director was unaware of the location of the Property. *See* Kramer Opening Brief at 10. It is clear throughout the Decision and entire administrative record in this case that the Regional Director understood that the Property is located in Santa Barbara, County, and I have no reason to doubt that this mistake was inadvertent.

[166] *See* AR0194.000094-101; 140-43; 1700-02. *See also* Regional Director Opening Brief at 17; Tribe Opening Brief at 13-14.

[167] AR0194.01700.

[168] *See* AR0123.00023.

[169] *See* AR0123.00022.

[170] *See* SYVCC Opening Brief at 23-25; County Opening Brief at 10-11; Kramer Opening Brief at 9-10; Crawford-Hall Opening Brief at 24-25; POLO Opening Brief at 2.

[171] *See Crest-Dehesa-Granite Hills-Harbison Canyon Subregional Planning Group v. Acting Pacific Reg'l Dir.*, 61 IBIA 208, 216 (2015).

[172] *Id.* (citing *Thurston County*, 56 IBIA at 68-69.

accurately notes that Appellants have not provided such evidence.[173] In any event, the administrative record for the Decision explicitly demonstrates that the Property would be acquired into trust status subject to "encumbrances and other matters of record."[174] Thus, the Tribe in this case is only conveying the Property in trust that the Tribe actually owns.

While Appellants disagree with the Regional Director's consideration of various jurisdictional concerns, mere disagreement with a decision is not sufficient to demonstrate the Regional Director abused her discretion.[175] In her decision, the Regional Director reasonably considered the jurisdictional impacts of placing the Property into trust. Therefore, the Appellants have not met their burden on appeal.

F. Whether the Bureau of Indian Affairs Is Equipped to Discharge Additional Responsibilities - 25 C.F.R. § 151.10(g)

25 C.F.R. § 151.10(g) requires the BIA to consider whether it is "equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status." As previously stated by the Board, "the determination of whether BIA can handle the additional duties is 'a managerial judgment that falls within BIA's administrative purview [and] we do not construe § 151.10(g) to necessarily require BIA' to include evidence of such ability in the record."[176]

In her decision, the Regional Director concluded that "[a]cceptance of the acquired land into Federal trust status should not impose any additional responsibilities or burdens on the BIA beyond those already inherent in the Federal trusteeship over the existing Santa Ynez Reservation."[177] She noted that most of the property is currently vacant and has no forestry or mineral resources that would require BIA management, but found that tribal housing and infrastructure may require leases and easements to be processed by the BIA.[178] The Regional Director also recognized that the Tribe will maintain the property through its Environmental Department and that emergency services will be provided to the property through agreements with the City and County Fire and Police Departments.[179]

Appellants the County, Crawford-Hall, and the Kramers argue that these agreements do not extend to the Property and that the BIA did not sufficiently address its ability to ensure that

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[173] *See* Tribe Opening Brief at 14.

[174] *See, e.g.*, AR0080.00078-83, 92-95; 105-180; 199-200 (Tribe's application including grant deed subject to encumbrances; list of title exceptions and documentation; and tribal resolution). *See also* AR00123.00001-3 (Legal Description in Decision).

[175] *See Shawano Cnty.*, 53 IBIA at 69; *Arizona State Land Dep't*, 43 IBIA at 160.

[176] *State of Kansas and Jackson County, Kansas v. Acting Southern Plains Reg'l Dir.*, BIA, 56 IBIA 220, 228 (2013) (citing *State of Kansas v. Acting Southern Plains Reg'l Dir.*, BIA, 53 IBIA 32, 39 (2011)).

[177] AR012.00023

[178] *See id.*

[179] *See id.*

certain mitigation measures will be performed.[180] However, as the Regional Director asserts, the agreements with the municipal offices for emergency services are only a single aspect of the Decision's analysis of the BIA's abilities.[181] Furthermore, the Administrative Record in this case demonstrates that the Tribe intends to establish its own police department, as well as grant permission to the Santa Barbara County Fire Department to enter the Property or enter into a new agreement.[182] The Tribe correctly points out that "[t]he BIA only performs minimal administrative functions such as recording land transactions documents and reviewing and approving rights of way, which it is already doing for the Tribe and will continue to do so."[183]

Appellants' unfounded assertions regarding BIA's inability to discharge responsibilities related to the Property, contradicted by the Record and the Decision, are insufficient to meet its burden on appeal with regard to Section 151.10(g).

G. The location of the land relative to state boundaries and its distance from the boundaries of the Tribe's reservation – 25 C.F.R. § 151.11(b)

Pursuant to 25 C.F.R. § 151.11(b), for off-reservation trust acquisitions, the BIA is required to consider "[t]he location of the land relative to state boundaries, and its distance from the boundaries of the tribe's reservation." Furthermore, "as the distance between the tribe's reservation and the land to be acquired increases, the Secretary shall give greater scrutiny to the tribe's justification of anticipated benefits from the acquisition."[184] The Secretary is additionally required to give greater weight to concerns raised by state and local governments commenting on a proposed acquisition's potential impacts on regulatory jurisdiction, real property taxes, and special assessments.[185]

Here, the Regional Director recognized that the Property, which is in Santa Barbara County, California, is situated only 1.6 miles from the Tribe's reservation.[186] It is located approximately 520 miles from the Oregon border, approximately 233 miles from the Nevada border, and approximately 307 miles from the Arizona border.[187]

Although Appellants SYVA, NMS, and the County argue that the Regional Director did not give heightened consideration to the local jurisdiction's concerns as required by the off-

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[180] *See* County Opening Brief at 9; Crawford-Hall Opening Brief at 24; Kramer Opening Brief at 25.

[181] *See* Regional Director Response Brief at 20.

[182] AR0237.00020-21; 448-59.

[183] Tribe Response Brief at 16 (citing *South Dakota v. U.S. Dep't of the Interior*, 775 F. Supp. 2d 1129, 1144 (D.S.D. 2011)).

[184] 25 C.F.R. § 151.11(b).

[185] *See id. See also City of Moses Lake v. Northwest Reg'l Dir.*, 60 IBIA 111, 118-19 (2015).

[186] *See* AR0123.00024.

[187] *See id.*

reservation acquisition criteria,[188] the record demonstrates otherwise. As discussed above, the Regional Director thoroughly addressed the ways in which the Tribe will benefit from the acquisition, especially given the Tribe's limited undeveloped acreage.[189] The Regional Director gave appropriate weight to comments submitted by the County, especially in light of the minimal distance between the Property and the Tribe's Reservation. The regulations do not impose any additional factors or requirements. I thus conclude that she fulfilled her responsibilities under 25 C.F.R. § 151.11(b).

H. Whether the Tribe Was Required To Provide a Business Plan – 25 C.F.R. § 151.11(c)

When land is being acquired for business purposes, 25 C.F.R. § 151.11(c) requires a tribe to submit a plan that "specifies the anticipated economic benefits associated with the proposed use." In this instance, the Regional Director concluded that "there are no new economic benefits associated with the acquisition."[190]

Some Appellants argue that the Regional Director was required to consider the Tribe's anticipated economic benefits and that the Tribe was required to submit a business plan.[191] However, Appellants have not provided any evidence that the Tribe has a current plan to develop the property for business purposes. As the Regional Director found, the Tribe's proposed uses for the Property, namely tribal housing and supporting infrastructure, do not reap economic benefits for the Tribe.[192] Furthermore, the possible ongoing operation of existing vineyards and stables at the Property does not constitute a new economic enterprise, and was not the primary purpose of the trust acquisition in any case.[193]

The Board has held that where, as here, "a tribe has no plans in the foreseeable future to develop property, § 151.11(c) could not have been intended to force the tribe to submit a 'plan' for a use not yet determined."[194] Accordingly, I conclude that the Regional Director did not err by failing to consider economic benefits or require that the Tribe submit a business plan under Section 151.11(c).

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[188] *See* County Opening Brief at 9-10; SYVA Opening Brief at 25-25; NMS Opening Brief at 8-9. I note that SYVA and NMS likely do not have standing to raise the interests of the County of Santa Barbara, as 25 C.F.R. § 151.11(b) only refers to comments from state and local governments and therefore only protects their interests.

[189] *See* AR0123.00021.

[190] AR0123.00024.

[191] *See* County Opening Brief at 9; County Reply Brief at 8; SYVCC Opening Brief at 21-23; SYVCC Reply Brief at 9-10; Crawford-Hall Opening Brief at 24; NMS Opening Brief at 9.

[192] *See* AR0123.00024. Contrary to the County's assertion, the possible operation of a tribal government facility is not a business and would not provide economic benefits to the Tribe. *See* County Opening Brief at 9; County Reply Brief at 8.

[193] AR0123.00024.

[194] *Grand Traverse County Board of Commissioners v. Acting Midwest Reg'l Dir.*, 61 IBIA 273, 284-85 (2015).

V. Allegations of Bias, Conflict of Interest, Violations of Due Process Principles, and *Ex Parte* Communications

Appellants have argued that the Regional Director exhibited bias in favor of the Tribe in the acquisition process, and that the Decision should be set aside for that reason. Others have alleged that their due process rights were violated when the Regional Director issued her decision, or that improper ex parte contacts occurred with agency employees. I find all of these claims unsubstantiated by facts and without merit, and accordingly, I reject them.

At the onset, I note that the processing of trust acquisition applications in accordance with the Department's regulations is not a formal adjudication between parties.[195] Tribes and individual Indians are authorized by law to apply to have their lands placed in trust status.[196] Accordingly, after an application is submitted, "interested parties such as local jurisdictions are invited to comment, BIA gives consideration to the information provided within the parameters of the criteria set out by law, and a decision is rendered."[197] As the Board has noted, the BIA's "mission is to provide services on behalf of the United States to the tribes and to individual Indians" and "the fee-to-trust application process is not intended to be an adjudicatory process."[198] Furthermore, "a presumption of regularity attaches to the actions of Government agencies"[199] and a party asserting bias bears the burden of proof.[200]

First, some Appellants assert that the BIA displayed bias and was not impartial throughout the decision-making process because of a purported lack of evidence supporting the Decision.[201] Other Appellants point to the existence of a law student's law school comment on the Department's fee-to-trust process[202] or documents regarding participation in a California fee-to-trust consortium,[203] none of which are part of the Administrative Record in this matter. These materials are extraneous and do not have any connection to the Regional Director's review of the Tribe's application or the specific Decision that is the subject of this challenge. In addition, Appellants have not provided any evidence from the Administrative Record that the Regional Director had made predetermined decisions here. I have no cause to doubt statements made in the sworn Declaration of the Regional Director that the Decision was based upon her careful review of the merits of the Tribe's application and that "[n]either the BIA-PRO process, nor [the] decision, was based on any bias, conflict of interest, or undue influence by the Tribe or any

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[195] *See Thurston County*, 56 IBIA at 304 n.11.

[196] *See id.*

[197] *Id.* at 304-05 n.11.

[198] *Id.*

[199] *U.S. Postal Serv. v. Gregory*, 534 U.S. 1, 10 (2001)

[200] *See Schweiker v. McClure*, 456 U.S. 188, 196 (1982).

[201] *See* Kramer Opening Brief at 6-9; Kramer Reply Brief at 2-5; POLO Opening Brief at 20-21.

[202] *See* Kramer Opening Brief at 6; Kramer Reply Brief at 4-5; Geyser and Corlett Opening Brief at 4 n.3; NMS Opening Brief at 23.

[203] *See* NMS Opening Brief at 22-24; NMS Reply Brief at 11-13.

other party."[204]

Next, the County believes that the BIA violated the U.S. Constitution's due process clause by sharing a draft of the FONSI with the Tribe and not the County.[205] However, the County has not shown that it has a constitutionally protected interest in receiving a draft pre-decisional document.[206] As the Regional Director has indicated,[207] it was appropriate for the BIA to share a draft of the FONSI with the applicant Tribe to ensure that mitigation measures would be carried out and to give an opportunity to complete a thorough environmental review.[208] It is also significant that the County was provided an opportunity to comment on the FONSI and at every other point of the environmental review process, as required by NEPA.[209]

For the same reasons, NMS' allegations that it was deprived of life, liberty, or property without due process of law fail.[210] NMS has not identified, under any law in any jurisdiction, that it has a protected interest in the BIA's review of the Tribe's application or the submission of a detailed business plan. Nor has NMS demonstrated that it was deprived of any specific rights or cognizable interests.

Lastly, contrary to assertions by the Kramers,[211] I have not seen any evidence of inappropriate ex parte communications with the BIA or its officers with respect to the Decision. As discussed above, the agency's fee-to-trust decision-making process is not a formal adjudication, and, therefore, it is not impermissible or unethical for the BIA to communicate with tribal applicants. It is, in fact, quite common and even prescribed by the Department's regulations.[212] In this instance, the Kramers have selected, out of context, discrete statements made by agency employees to the Tribe about the status of its application. They have gone on to ascribe these remarks with wrongful or erroneous intent. In sum, for all of these reasons, I conclude that there is no evidence or legal basis for any of the Appellants' claims that the

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[204] Regional Director Brief at Exhibit A.

[205] *See* County Opening Brief at 22-23.

[206] *See Muwekma Ohlone Tribe v. Salazar*, 708 F.3d 209, 219 (D.C. Cir. 2013) (quoting *Hettinga v. United States*, 677 F.3d 471, 479-80 (D.C. Cir. 2012) ("A 'threshold requirement of a due process claim' is 'that the government has interfered with a cognizable liberty or property interest.'")). *See also Dist. Hosp. Partners, L. P. v. Sebelius*, 971 F. Supp. 2d 15, 32 (D.D.C. 2013) (predecisional and deliberative documents are not part of the administrative record).

[207] Regional Director Brief at 26.

[208] *See Mid States Coalition for Progress v. Surface Transp. Bd.*, 345 F.3d 520, 547 (8th Cir. 2003) (quoting 40 C.F.R. § 1506.5(a)) ("The CEQ regulations, however, contemplate a role for applicants in providing information necessary to complete an environmental review, so 'that acceptable work not be redone.'").

[209] *See, e.g.*, AR244.0001.

[210] *See* NMS Opening Brief at 9, 22-23.

[211] *See* Kramer Opening Brief at 7-9; Kramer Reply Brief at 5-6.

[212] *See, e.g.*, 25 C.F.R. § 151.10 ("If the state or local government responds [to a notice of an application] within a 30-day period, a copy of the comments will be provided to the applicant, who will be given a reasonable time in which to reply and/or request that the Secretary issue a decision.")

Regional Director engaged in forbidden ex parte communications or otherwise manifested any sort of bias in connection with the Decision.[213]

VI. Compliance with NEPA

A. Standard of Review

NEPA requires federal agencies to consider reasonably foreseeable environmental impacts on actions that may affect the quality of the human environment.[214] NEPA also requires that information on environmental impacts be made available to public officials and citizens for comment before the agency takes action on a project.[215] A NEPA analysis does not mandate specific results, but instead compels agencies to incorporate environmental considerations into their reviewing procedures.[216] These considerations are required to show that a federal agency took a "hard look" at reasonably foreseeable environmental impacts prior to taking action.[217] Thus, a NEPA analysis does not require that a particular decision be reached but only that a certain procedure be followed.[218] NEPA demands that agencies consider potential environmental impacts when deciding whether to act, not evaluate environmental impacts above all other considerations.[219] An agency's final decision generally receives strong deference after the conclusion of a NEPA analysis.[220]

NEPA requires that, when an agency conducts an EA, it must use the analysis to determine the severity of environmental impacts and identify whether alternative courses of action are available that would mitigate impacts.[221] If impacts identified in the EA will be significant, NEPA requires that the agency prepare an EIS. If the impact will be insignificant, or

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[213] POLO similarly makes the baseless suggestion that the Regional Director has engaged in ex parte communications over the course of this administrative appeal. *See* POLO Opening Brief at 20-21; POLO Reply Brief at 12-13. In this case, I am the decision maker, and I stand in the shoes of the Board, having assumed jurisdiction over these appeals. Accordingly, any communication between the Regional Director and the Tribe about this matter is not improper. I also reject POLO's argument that the decision in this case should be delayed until a new Assistant Secretary is appointed and confirmed as lacking any merit. See POLO Reply Brief at 14-15. As Principal Deputy Assistant Secretary-Indian Affairs, I have delegated authority to make a determination in these appeals. *See* 209 DM 8.

[214] 40 C.F.R. §1501.1(d).

[215] 40 C.F.R. §1502(a)(4).

[216] *Voices for Rural Living v. Acting Pac. Reg'l Dir., 49 IBIA 222, 239 (quoting Hells Canyon Alliance v. U.S. Forest Serv.*, 227 F.3d 1170, 1177 (9th Cir. 2000).

[217] *Id.*

[218] *See Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989). *See also Western Exploration Inc.*, 169 IBLA 388, 398 (2006).

[219] *Baltimore Gas & Electric Co. v. NRDC*, 462 U.S. 87, 97 (1983).

[220] *Kleppe v. Sierra Club*, 427 U.S. 390, 410 n.21 (1976).

[221] *See* 40 C.F.R. § 1508.9.

if no impact is identified in the EA, then the agency may issue a FONSI.[222] The agency decision to complete an EA may be reviewed as a means of determining whether or not the EA and FONSI are supported by the record, and whether they reflect "a rational connection between the facts found and the choice made."[223] BIA's decision to issue a FONSI will generally be upheld as long as the EA provides a reasonable explanation for the issuance of a FONSI that represents the agency having taken a hard look at the environmental consequences, and alternatives, of action.[224] The burden of proving that the NEPA process followed by an agency was in error rests with the party challenging the agency action.[225]

I reviewed the BIA's FONSI to determine whether the agency had reasonably followed the NEPA process and used the information gathered from the EA to make its decision. I will not second guess the data used as the baseline for the NEPA analysis conducted by the BIA unless the EA does not contain a discussion of significant impacts and reasonable alternatives.[226] I will hold that the BIA was correct in finding that an EA was appropriate to comply with NEPA in the trust acquisition of the Property, if there is sufficient evidence in the Administrative Record that the agency followed the proper procedures in analyzing the project.

B. Whether Comments Were Addressed By the BIA

Appellants argue that the EA and FONSI were unsupported by the record and thus the BIA's Decision was arbitrary and capricious.[227] POLO argues that the comments that they submitted to the BIA were justification for BIA to conduct an EIS instead of an EA and FONSI.[228] They also contend that the BIA delegated its decision-making responsibility for responding to comments to the Tribe and in doing so comments were ignored that would have led to the completion of an EIS.[229] POLO additionally argues that the NEPA analysis was clouded by the BIA's mission to serve Tribes, and this created the agency's inability to engage in a hard look at the project.[230] The Administrative Record clearly shows that the BIA responded to POLO's comments and discussed the comments prior to issuing the EA.[231] Additionally, as

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[222] *See* 40 C.F.R. § 1501.4, 1508.9.

[223] *Friends of Yosemite Valley v. Kempthorne*, 520 F.3d 1024, 1032 (9th Cir. 2008). *See also Voices for Rural Living*, 49 IBIA at 239.

[224] *Neighbors for Rational Development, Inc. v. Albuquerque Area Director*, 33 IBIA 36, 43 (1998).

[225] *Forest Guardian v. U.S. Fish and Wildlife Service*, 611 F.3d 692, 711 (10th Cir. 2010) (*quoting Citizens' Comm. to Save Our Canyons*, 513 F.3d 1169, 1176 (10th Cir. 2008).

[226] AR0194.01689.

[227] *See* Kramer Opening Brief at 15; POLO Opening Brief at 20; SYCC Opening Brief at 18; County Reply Brief at 11; Kramer Opening Brief at 5; POLO Opening Brief at 1; SYCC Opening Brief at 11.

[228] *See* POLO Opening Brief at 19; POLO Reply Brief at 11.

[229] *See* POLO Opening Brief at 20; POLO Reply Brief 12.

[230] *Id.*

[231] AR0194.01768-69; AR0194.1893-97; AR0237.00454-56.

discussed above, POLO does not provide or cite to any evidence in support of the speculations that BIA delegated its decision-making authority to the Tribe, or that it was influenced improperly through its responsibility to serve Tribal interests.[232] The responsibility to serve Indian Country does not prevent the BIA from rationally analyzing environmental impacts from proposed development, as it did here. POLO provides no evidence to support its claims that the EA was unsubstantiated by the record.

Appellants Kramer, the County, SYVCC, Crawford-Hall, and SYVA attempt to prove that an EIS was required here by reiterating their comments from the NEPA process, by ignoring BIA's consideration and response to those comments, and by assuming that the BIA failed in its duty to comply with NEPA. Appellants ignore the evidence in the record showing BIA's careful consideration of comments submitted in the EA and the FONSI.[233] Additionally, Appellants neither provide nor cite to any evidence to support their speculations that BIA failed to comply with NEPA. Thus, I hold that Appellants fail to meet their burden of proof that the BIA acted arbitrarily and capriciously.

C. Evaluation of Impacts in the EA and FONSI

1. Use of an Appropriate Baseline

Appellants argue that the baseline data used to project potential impacts for proposed projects on Camp 4 was improper because it did not take into account future impacts.[234] In undertaking a NEPA analysis, an agency is only required to take a hard look at the potential impacts of a proposed project.[235] This analysis must be reasonably supported by the record such that a review can follow the agency's decision-making process.[236] Here, the FONSI prepared by the agency states that, "the BIA defined the environmental baseline and existing setting using the planning documents and information available at this time. The Proposed Action and project alternatives were then analyzed within the context of the existing setting to determine potential environmental impacts."[237] The FONSI also states that the BIA took into consideration future

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[232] *No Casino in Plymouth v. Jewell*, 136 F.Supp.3d 1166, 1192 (E.D. Cal. 2015)("federal agencies are frequently charged with undertaking environmental review of projects for which they have an institutional interest."); *See also Sierra Club v. Marsh*, 714 F.Supp. 539, 551 (D. Maine 1989), aff'd, 976 F2d. 763 (1st Cir. 1992)("Absent evidence that the coordinating consultant . . . has been given decisionmaking authority by the lead agency to determine EIS content, as distinguished from the responsibility to inform and make recommendations to the agency, would not make the consultant a "preparer.").

[233] AR0194.01786; AR0194.01798; AR0194.01822; AR0194.01877; AR0194.1880; AR0194.01889; AR0194.01891; AR0194.1895.

[234] *See* County Opening Brief at 20; Crawford-Hall Opening Brief at 11; Kramer Opening Brief at 14; SYCC Opening Brief at 17.

[235] *See Methow* 490 U.S.at 1836.

[236] *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 361 (1989).

[237] AR0237.00428.

adverse impacts associated with alternatives identified and other foreseeable projects on Camp 4.[238] The information in the EA supports the decision to use readily available data as opposed to future projections.[239] Thus, I find that BIA acted in a manner necessary to comply with NEPA.

Appellants also contend that the BIA acted improperly in conducting the EA by using a "present-day" baseline as opposed to one taking into account future developments in the area.[240] As addressed above, the justification used by Appellants for this argument relate to the property in question being subject to Williamson Act restrictions precluding development on the property from taking place until 2023.[241] Thus, Appellants argue that analyzing the property using a present-day baseline as opposed to one undertaken nearer to the 2023 deadline amounts to an inaccurate analysis of impacts at a future date. Appellants contend that the BIA acted improperly in assuming that present-day data would continue to apply in 2023.[242]

In order to analyze the affected environment, "NEPA requires the agency to set forth the baseline conditions."[243] The use of available data in conducting a NEPA analysis is an integral part of a reasonably supported agency decision-making process.[244] The BIA is required to use the tools within its disposal to project potential impacts, not wait for impacts to come to substantive fruition before approving a federal project. Thus, I hold that the BIA used the information available to it to conduct the EA. The baseline data was sufficiently supported by the record of the agency's decision-making process, and its use to understand impacts of development on Camp 4 was reasonable. For the BIA to have to wait until the Williamson Act restrictions are lifted to conduct the NEPA analysis would be impractical.

2. Consideration of a Reasonable Range of Alternatives

Appellants argue that the BIA did not consider all alternatives in the EA.[245] Some Appellants also argue that the alternatives considered by the BIA were too similar and not distinct.[246] Other Appellants contend that the no action alternative, "Alternative C", was not

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[238] *See* AR0237.00005-7.

[239] *See* AR0237.00428-29.

[240] *See* County Opening Brief at 20; Crawford-Hall Opening Brief at 11; Kramer Opening Brief at 14; SYCC Opening Brief at 17.

[241] *See id.*

[242] *See id.*

[243] *Western Watersheds Project v. Bureau of Land Management*, 552 F.Supp.2d 1113, 1128 (D. Nev. 2008).

[244] *See Am. Rivers v. FERC,* 201 F.3d. 1186, 1195 n.15 (9th Cir. 1999) ("[A] baseline is not an independent legal requirement, but rather, a practical requirement in environmental analysis often employed to identify the environmental consequences of a proposed agency action").

[245] *See* County Opening Brief at 19; Crawford-Hall Opening Brief at 21; SYCC Opening Brief at 13; SYVA Opening Brief at 20.

[246] *See* SYCC Opening Brief at 14; POLO Opening Brief at 17; SYVA Opening Brief at 21.

fully considered by the BIA and deserved further analysis.[247] Appellants also argue that the alternatives not considered by BIA would likewise serve the purpose and need of the project.[248] Under NEPA, when conducting and drafting an EA, an agency must "briefly specify the underlying purpose and need to which the agency is responding in proposing alternatives including the proposed action."[249] Agencies valuing alternatives in the NEPA process are not required to produce a particular result, but are instead only required to follow the statutory framework for analysis.[250] In this case, the BIA provided its reasoning for selecting Alternatives A and B to respond the purpose and need of the project, and gave explanations as to why other alternatives, including Alternative C, were not selected.[251] Additionally, BIA considered whether the plan for Camp 4 could be comprised of fewer acres and whether the plan could be implemented on land already held in trust for the Tribe as alternatives.[252] The BIA properly concluded that these alternatives did not fit the required purpose and need for the project, and that there was no other way to construct the housing development component of the plan within existing land use plans.[253] The BIA considered many alternatives, and reasonably decided which alternatives to pursue under NEPA as proven by the Administrative Record. The Decision and Administrative Record show that the correct NEPA procedure was followed. Therefore, I reject Appellants arguments that the Regional Director erred in evaluating alternatives in the EA.

3. Analysis of Resource Impacts

Appellants contend that the BIA failed to adequately analyze impacts to certain natural resources in the region in conducting its NEPA analysis.[254] In order to demonstrate that the BIA's analysis was inadequate, Appellants must show that the agency's decision-making process was flawed and that, as a result, the EA was completed in error. The resource impacts should only be reviewed for procedural defects and they cannot be reviewed in favor of a particular substantive result.[255] When reviewing the decision-making process of a NEPA analysis, deferential treatment is further required when the "analyses are within the agency's expertise."[256]

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[247] *See* County Opening Brief at 19.

[248] *See* SYVA Opening Brief at 16.

[249] 40 C.F.R. §1502.13.

[250] *Spiller v. White*, 352 F.3d 235, (5th Cir. 2003).

[251] AR0127.00016-29; AR0127.0030-32.

[252] AR0127.00157.

[253] AR0127.00181-82.

[254] *See* County Opening Brief at 16-17; Crawford-Hall Opening Brief at 12-15; Kramer Opening Brief at 16-20; SYCC Opening Brief at 11; SYVA Opening Brief at 7-9.

[255] *See Native Ecosystems Council v. Weldon*, 697 F.3d. 1043, 1051 (9th Cir. 2012).

[256] *See id. See also Northern Plains Resource Council, Inc., v. Surface Transp. Bd.*, 668 F.3d. 1067, 1076 (9th Cir. 2011).

a. Land Resources Impact Analysis

Appellants argue that the development of Camp 4 proposed by the Tribe would have significant impacts upon the land resources of the property, and in particular, its agricultural resources.[257] Appellants argue that the development will have future impacts upon the agricultural resources of the area because the development will encourage further conversion of the land resources to residential and commercial uses.[258] As shown in the Administrative Record, the BIA took the land and agricultural resources into consideration in its analysis of proposed alternatives, and found that the impacts to these resources were insignificant. The BIA reasoned that the impacts would be insignificant due to low impact project design and mitigation measures undertaken by the development.[259] Additionally, the BIA considered two alternatives, one of which would reserve a portion of the property from development.[260] I find that the BIA undertook the proper analysis as required by NEPA's procedural framework to understand the impacts to land resources and therefore uphold the agency's land resource impact analysis.

b. Water Resources Impact Analysis is Adequate

Appellants contend that there will be severe impacts on water resources in the area where Camp 4 is located upon its development under the Tribe's plan.[261] Additionally, some Appellants argue that the development will place added strain on the availability and quality of groundwater resources of the region.[262] Appellants also contend that the water usage of the proposed development was understated in the EA.[263] In the EA conducted, the Regional Director considered mitigation plans that would lessen the impact on water quality[264] and availability[265] in the area to the point of insignificance. The BIA also considered the extensive number of comments submitted by Appellants in connection to water resources in the area. This was addressed in the EA, for example, when the BIA highlighted the field well pumping tests conducted by the Tribe to test the existing capacity of the groundwater wells onsite.[266] Thus, I find no evidence that the BIA under-analyzed or manipulated water resource numbers in its analysis. Instead, I find that the BIA, by taking the pumping tests into consideration as a

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[257] *See* County Opening Brief at 6; Crawford-Hall Opening Brief at 16; Kramer Opening Brief at. 4; POLO Opening Brief at 2; SYCC Opening Brief at 12; SYVA Opening Brief at 7.

[258] *Id.*

[259] *See* AR.0194.00194-95.

[260] *See* AR.0194.00732.

[261] *See* County Opening Brief at 13.

[262] *See id. See also* Crawford-Hall Opening Brief at 5; Kramer Opening Brief at 16; SYCC Opening Brief at 19; SYVA Opening Brief at 14.

[263] *See* County Opening Brief at 14; Kramer Opening Brief at 17; SYCC Opening Brief at 19.

[264] *See* AR0194.00198.

[265] *See* AR0194.00196.

[266] *See* AR0194.01689; AR0194.01745.

potential impact, performed due diligence in analyzing the overall impact of the project on water resources in the region. As a result, I hold that the BIA did not err in analyzing water resource impacts and thus complied with NEPA.

c. Air Quality Impact Analysis

Appellants Crawford-Hall and Kramer contend that air quality will be harmed by the Tribe's proposed plan for Camp 4;[267] however, their comments regarding air quality concerns were addressed by the BIA.[268] The BIA properly analyzed air quality impacts in the EA, identifying mitigating measures that would reduce greenhouse gas emissions resulting from the project.[269] I therefore defer to the agency's decision finding those impacts have little significance.

d. Biological Resources Impact Analysis

Some Appellants argue that there will be significant impacts to biological resources in the area and that these impacts cannot be mitigated to insignificance.[270] Many of the Appellants raise concern over the proposed project's negative impact upon protected species and habitat areas.[271] Specifically, they worry that the project would have an adverse effect on the critical habitat of Vernal Pool Fairy Shrimp, steel head trout, California red-legged frogs, Least Bells Vireos, oak trees, and Thompson's Bats.[272] In the FONSI and EA, the BIA addressed these impacts in its analysis, and responded to Appellants' comments regarding biological resources.[273] The FONSI states that the BIA will establish a wetland buffer zone of 250 feet around critical habitat of the Vernal Pool Fairy Shrimp, and that a 500 foot buffer around wetland habitat will be utilized during project construction.[274] The FONSI also outlines mitigation measures including the completion of a preconstruction survey to be implemented on the site to minimize impact on the breeding habitat of the red-legged frog.[275] Additionally, an analysis of the impact of development on migratory birds is included in the EA,[276] and mitigation measures are outlined in the FONSI that would reduce the impact to nesting areas during construction of the project.[277] The FONSI also states that the BIA will ensure that a qualified

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[267] *See* Crawford-Hall Brief at 2, 7-8; *See* Kramer Opening Brief at 25.

[268] *See* AR0194.01799.

[269] *See* AR0194.00027.

[270] *See* County Opening Brief at 13-14; Crawford-Hall Opening Brief at 2; Kramer Opening Brief at 13, 22.

[271] *See* County Opening Brief at 13-14; Kramer Opening Brief at 13, 22.

[272] *See* Crawford-Hall Opening Brief at 13; Kramer Opening Brief at 13; SYVA Opening Brief at 8, 11, 17.

[273] *See* AR0194.00075-78.

[274] *See* AR0237.00016.

[275] *See id.*

[276] *See* AR0194.00077.

[277] *See* AR0237.00017.

biologist will participate in the marking of the wetland boundaries in order to mitigate impact on the species. I conclude that the agency considered the biological resource impacts and adequately followed NEPA procedure in developing mitigation plans to reduce these impacts to insignificance.

e. Traffic Impact Analysis

Appellants argue that the proposed development of Camp 4 will increase traffic impacts and negatively affect existing transportation resources in the region.[278] They also contend that the BIA did not take into full account the California Department of Transportation's advice that the traffic study conducted as part of the EA utilized an incorrect minimum operating standard for highways in the area, thus underestimating the capacity of regional roadways.[279] They contend that, by not taking these comments into account, the BIA was unable to conduct a complete analysis of traffic impacts. However, the Administrative Record demonstrates that the BIA took Appellants' comments into consideration in the EA,[280] and undertook an extensive traffic impact study as part of the environmental analysis.[281]

Appellants also contend that the traffic analysis was incomplete due to the failure of the agency to analyze the intersection of Highways 246 and 154.[282] The Administrative Record clearly reflects that the BIA took this intersection into consideration when conducting its traffic study, and shows that mitigation measures were suggested to lessen the impact to insignificance.[283] Thus, I hold that the Administrative Record shows that the BIA considered the comments of the California Department of Transportation and looked to the impacts of intersection Highways 246 and 154 and in doing so the BIA followed proper procedure under NEPA.

f. Land Use Impact Analysis

The County of Santa Barbara argues that the land use impacts of the proposed development were not adequately taken into consideration by the BIA, and that the project will conflict with existing land use plans and result in lost tax revenue for the area.[284] Other Appellants claim that the BIA acted erroneously in stating that the proposed project would be

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[278] *See* County Opening Brief at 1, 8, 13; Crawford-Hall Opening Brief at 8; Kramer Opening Brief at 18; SYCC Opening Brief at 3, 12.

[279] *See* County Opening Brief at 14-15; Kramer Br. 18-19.

[280] *See* AR0194.01713-01897.

[281] See AR0194.00090-92.

[282] *See* County Br. Ex. A.

[283] *See* AR0194.00034; AR0194.00138; AR0194.00164; AR0194.00183.

[284] *See* County Opening Brief at 3, 7.

compatible with local land use planning in the surrounding communities.[285] Specifically, the Kramers argue that the proposed tribal facilities will potentially conflict with local land use plans, because of the undisclosed scope of the project, and that the BIA erred in not finding that there will be significant impact on existing land uses due to this jurisdictional conflict.[286] POLO contends that putting Camp 4 into trust would not serve any stated need of the Tribe to exercise its own land use controls.[287] Additionally, Appellants argue that the BIA only looked at land use restrictions that would take place once a fee-to-trust transfer had been completed, and thus did not consider the jurisdictional conflicts that will arise from the transfer regarding land use.[288] However, the Administrative Record shows that the EA analyzed potential land use changes in evaluating the project's alternatives.[289] Additionally, the EA illustrates the Tribe's land use plan for the project site under both alternatives A and B.[290] The EA also extensively reviews the jurisdictional issues that will arise with the land transfer into trust of Camp 4, showing that the BIA took the planning documents of the surrounding communities under consideration in selecting alternatives for development.[291] I conclude that the BIA acted in accordance with NEPA procedure in assessing potential land use impacts, by considering the existing land use plans and how the transfer of land may conflict with those plans.

g. Noise Impact Analysis

Some Appellants claim that the development will have a severe effect on noise pollution in the region and thus affect the agricultural resources of the area.[292] The EA analysis of noise impacts was thorough, taking data from several points along the proposed development site and analyzing the data with the existing uses of the region to understand noise impact.[293] Additionally, the EA evaluated potential noise impacts using Federal Highway Administration Construction Noise Thresholds, Noise Abatement Criteria and Federal Interagency Committee on Noise assessment data.[294] The BIA also looked at the County of Santa Barbara's noise regulations and evaluated potential impacts under the region's policies.[295] In conducting such a thorough analysis, I conclude that the BIA complied with NEPA.

h. Public Services Impact Analysis

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[285] *See* Kramer Opening Brief at 21, POLO Brief at 17; SYVA Opening Brief at 12.

[286] *See* Kramer Opening Brief at 22.

[287] *See* POLO Opening Brief at 16.

[288] See POLO Opening Brief at 17; SYVA Opening Brief at 4; SYVA Opening Brief at 16.

[289] *See* AR0194.00019.

[290] *See* AR0194.00020-21.

[291] *See* AR0194.00094-101.

[292] *See* Crawford-Hall Opening Brief at 5-6; Kramer Opening Brief at 11; SYCC Opening Brief at 3.

[293] *See* AR0194.00106-109; AR0194.00112.

[294] *See* AR0194.00109.

[295] *See* AR0194.00111-2.

Appellants raise concerns that the development will add strain to public services and resources available to surrounding communities.[296] However, the BIA examined additional strain on public services and made recommendations as to how to best mitigate that strain in the EA. The EA states that "structural fire protection would be provided through compliance with tribal ordinances no less stringent than applicable International Fire Code Requirements."[297] Additionally, public services as well as water and waste services were considered in each proposed alternative to the development.[298] The EA looked to existing public services and analyzed their capacity in response to new development on Camp 4 and found the impact to be insignificant. Accordingly, I affirm the BIA's finding of insignificance.

i. Visual Resources Impact Analysis

The County of Santa Barbara argues that the proposed development may harm visual resources in the region where it would be located.[299] It contends that, even though there were no designs proposed for the development of Camp 4, the lack of designs in both alternatives in areas where there are scenic roads raises questions about the impact on the visual resources of the area.[300] However, the Administrative Record demonstrates that the BIA took impacts to these resources into account and developed mitigation measures for the project that would reduce the impacts to insignificance.[301] These mitigation measures discuss buffering night lighting from the development and adhering to dark sky standards for construction.[302] I conclude that the analysis and mitigation measures contemplated by the BIA in the NEPA process are sufficient to support a finding of insignificance.

j. Tribal Facility Impact Analysis

Appellants the County, the Kramers, and SYVCC take issue with the impact of the development of the proposed Tribal Facility under Alternative B.[303] Appellants argue that the facility is of unknown purpose, has too large a footprint, and is not consistent with the current land uses in the surrounding area.[304] The Administrative Record shows that the facility is only a speculative piece of the development of Camp 4 and, as such, no design plans were needed for the NEPA analysis. Additionally, the BIA responded to comments about the Tribal Facility

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[296] *See* County Opening Brief at 13; Crawford-Hall Opening Brief at 2; SYVA Opening Brief at Ex. C.
[297] *See* AR0194.00027.
[298] *See* AR0194.00031; AR0194.00101.
[299] *See* County Opening Brief at 15;
[300] *See id.*
[301] *See* AR0194.00117.
[302] *See* AR0194.00172.
[303] *See* County Opening Brief at 19; Kramer Opening Brief at 21; SYCC Opening Brief at 6.
[304] *See* County Opening Brief at 8-9.

through an updated Water and Wastewater Feasibility Study.[305] As part of the EA, the BIA looked to the estimated trip generation for the Tribal Facility to better understand the impact on traffic and land use to the surrounding areas.[306] Appellants fail to show that the proposed development under Alternative 4 necessitates design plans and additional analysis other than what has already been undertaken by the BIA.

k. Cumulative Impacts Analysis and Growth Inducing Analysis

Appellants argue that the BIA did not take into account the cumulative impacts of the development of Camp 4 with enough specificity.[307] The Kramers contend that the BIA erred by not evaluating growth-inducing impacts, cumulative impacts to sensitive water resources, the strain on public services and conflicts with existing land uses.[308] SYVCC argues that the BIA failed to analyze the cumulative impacts of not only the development of Camp 4, but also of housing developments beyond what is provided for in Alternative B.[309] SYVA argues that the cumulative impacts analysis was incomplete because it did not take into account the impact of developing a recent trust acquisition of 6.9 acres, the expansion of the Tribe's casino, and the potential for other reasonably foreseeable development.[310] They also speculate that the BIA should have taken into account that some other land owners may be convinced to turn their land over from agricultural uses to residential or commercial uses, which would increase the cumulative impact of the Camp 4 development on the community.[311]

The BIA, through its FONSI and EA, evaluated reasonably foreseeable cumulative impacts.[312] As explained in the sections above, land, water, public service and land use conflicts were accurately addressed in the procedures undertaken by the BIA in compliance with NEPA. The suggestion by Appellants that the BIA should have evaluated the additional parcel and the casino expansion, as well as the argument that the development may spur further conversion of agricultural land into commercial land, are merely speculative. Furthermore, the EA took into consideration the potential casino renovation, and considered all reasonable developments using the Santa Ynez Valley Community Plan.[313] Therefore, I hold that the BIA evaluated what it could reasonably foresee as cumulative impacts, and did not err in completing the EA.

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[305] *See* AR0194.01867.

[306] *See* AR0194.00163.

[307] *See* County Opening Brief at 17; Kramer Opening Brief at 22; POLO Opening Brief at 19; SYCC Opening Brief at 13; SYVA Opening Brief at 9.

[308] *See* Kramer Opening Brief at 22.

[309] *See* SYCC Opening Brief at 13.

[310] *See* SYVA Opening Brief at 9.

[311] *See id.*

[312] *See* AR0194.00176.

[313] *See* AR0194.00176.

4. BIA's Issuance of and Reliance on the FONSI

A finding of insignificance in a NEPA analysis requires that the agency find that either the effects of the proposed development are insignificant to the surrounding environment, or potential effects can be reduced to insignificance by appropriate mitigation measures.[314] Appellants argue that the development on the Property will have significant impacts, and that any mitigation measures suggested by BIA in the EA are not enough to reduce the impacts to insignificance.[315] The County asks that the NEPA analysis be supplemented to take the severe impacts into account and to consider alternative mitigation measures.[316] Mitigation measures are discussed throughout the EA conducted by the BIA, with extensive analyses for both proposed alternatives.[317] I hold that the analyses conducted by BIA under NEPA reasonably support a finding of insignificance and defer to the agency's expertise in determining the appropriate mitigation measures to facilitate insignificance where necessary.

a. EA Analysis of Impacts

Appellants argue that the EA inaccurately assesses the environmental impacts probable from the development of Camp 4. Appellants also argue that the jurisdictional challenges of conflicting land uses were not properly taken into account by the BIA. One Appellant argues that the public's informational rights were infringed upon in the NEPA process in that the public did not have the opportunity to comment on all measures included in the final draft EA.[318]

As discussed in the sections above, I hold that the BIA accurately assessed potential impacts to the environment through its NEPA analysis. I also hold that the land use conflicts were accurately considered using existing land use plans, and that the argument that these conflicts cannot be resolved is purely speculative. Additionally, I hold that the extended comment periods used by the BIA in response to public request show that there was ample opportunity for the public to comment on the plan and participate in the NEPA process. Thus, the EA is sufficient to analyze the impacts of Camp 4's development.

b. Whether an EIS Was Required

In reviewing an agency's decision to conduct an EA or an EIS, courts look to "the substance of those documents to determine whether they took the requisite 'hard look' at

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[314] *See* 40 C.F.R. §1501.4(a)(1-2).

[315] *See* County Opening Brief at 16; Kramer Opening Brief at 24; POLO Opening Brief at 19; SYVA Opening Brief at 10.

[316] *See* County Opening Brief at 23.

[317] *See* AR0194.00194.

[318] *See* Crawford-Hall Opening Brief at 21-22.

environmental consequences."[319] In completing the EA for the proposed Camp 4 project, the BIA conducted a thorough analysis of potential impacts, finding them to be insignificant under NEPA. The BIA looked to impacts on land resources, water resources, air quality, biological resources, cultural resources, socioeconomic conditions, traffic impacts, strain on public services, land use conflicts, noise pollution, hazardous materials, and visual resource impacts. The BIA issued two EAs, responded to public comment and integrated comments into the EA where possible. The BIA encouraged public participation in the NEPA process. As a result of the procedural action of the BIA, I conclude that it complied with NEPA in issuing an EA, and that an EIS was not required. I defer to the agency in making this decision, as its analysis is well researched and reasoned.

i. Whether Mitigation Measures Are Adequately and Sufficiently Detailed

Mitigation measures for potential impacts identified in the EA were extensively researched and evaluated. Mitigation measures are discussed throughout the EA itself in discussions of each of the analyzed impacts.[320] In fact, the BIA devoted an entire section of the EA to mitigation measures, and where necessary, looked to scientific expertise in determining mitigation measures required to find a level of insignificance.[321] Thus, I hold that the BIA adequately identified mitigation measures for the potential impacts, based in scientific data proving their efficacy.

ii. Whether Supplementation Is Required

The County argues that the BIA should conduct NEPA supplementation because the BIA failed to consider other alternatives and because California has a current water shortage.[322] In accordance with NEPA, supplementation is required when there are "substantial changes in the proposed action that are relevant to environmental concerns," or "significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts."[323] The County's suggestion that the BIA should consider another alternative to development on the parcel does not rise to the level of requiring supplementation. There have been no substantial changes in the proposed action relevant to environmental concerns, as well as no new circumstances or information. I therefore conclude that the water restrictions do not create a situation for which supplementation is necessary.

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[319] *Montana Wilderness Ass'n v. Fry*, 310 F.Supp.2d 1127, 1143 (D. Mt. 2004).

[320] *See* AR0194.00120-93.

[321] *See* AR0194.00194.

[322] *See* County Opening Brief 23-25;

[323] *See* 40 C.F.R. 1502.9(c)(1)(i-ii).

VII. Save the Valley's Amicus Brief

On April 1, 2016, without leave from this Office, Save the Valley, LLC ("STV") submitted an amicus brief in these appeals which consisted predominantly of a complaint against the Department filed in federal court related to the Tribe's withdrawn land consolidation plan.[324] In response, the Regional Director submitted a Motion to Strike STV's amicus curiae brief.[325] On April 28, 2016, I issued an Order stating that "I will consider both pleadings in issuing my final decision."[326]

The STV amicus brief was untimely filed. Formal briefing in this matter concluded on February 16, 2016. In an Order dated March 18, 2016, I asked the actual parties in these appeals to file supplemental briefs addressing an issue concerning the Tribe's Proposed Tribal Land Use Map that had been raised by the Kramers, discussed *supra*.[327] The complaint that STV submitted not only fails to address that issue, but raises an entirely separate legal claim. Accordingly, I reject STV's belated attempts to enter into these appeals, and I grant the Regional Director's Motion to Strike STV's amicus brief.

Conclusion

Pursuant to the authority delegated to me by 25 C.F.R. § 2.4(c), I affirm the Regional Director's December 24, 2014 decision to take approximately 1,427.28 acres of land in trust for the Santa Ynez Band of Chumash Indians. This decision is final in accordance with 25 C.F.R. § 2.20(c) and no further administrative review is necessary. The Regional Director is authorized to approve the conveyance document accepting the Property in trust for the Tribe subject to any remaining regulatory requirements and approval of all title requirements.

Dated: 1/19/17

Lawrence S. Roberts
Principal Deputy Assistant Secretary –
Indian Affairs

[324] *See* Save the Valley, LLC's Amicus Curiae Brief In Support Of Appellants.
[325] *See* Regional Director's Motion to Strike.
[326] *See* Order Regarding Appellee's Motion to Strike.
[327] *See* Order Regarding Appellants' Supplemental Reply Brief; Kramer Supplemental Reply Brief.

EXHIBIT C

ASSISTANT SECRETARY – INDIAN AFFAIRS
UNITED STATES DEPARTMENT OF THE INTERIOR

BRIAN KRAMER and SUZANNE KRAMER; AND LEWIS P. GEYSER and ROBERT B. CORLETT, *Appellants,* *v.* PRINCIPAL DEPUTY ASSISTANT SECRETARY – INDIAN AFFAIRS and BUREAU OF INDIAN AFFAIRS, *Appellees.*	)

Order Denying Petition for Reconsideration
by Appellants Brian Kramer and Suzanne Kramer

On January 19, 2017, Principal Deputy Assistant Secretary – Indian Affairs Lawrence S. Roberts issued a decision (PDAS Decision)[1] dismissing administrative appeals from a 2014 determination by the Bureau of Indian Affairs Pacific Regional Director to take certain land into trust for the Santa Ynez Band of Mission Indians (Tribe). In February 2017, Brian Kramer and Suzanne Kramer (Appellants) appealed the PDAS Decision to the Interior Board of Indian Appeals (IBIA), claiming it was not final for the Department because issued by a "deputy" within the meaning of 25 C.F.R. § 2.20.[2] I assumed jurisdiction and on July 13, 2017 issued an order dismissing the appeal (Order) for lack of jurisdiction on the basis that the PDAS Decision was final for the Department.[3] On July 31, 2017, Appellants filed a petition requesting that I reconsider the Order.[4] For the reasons explained below, I deny their request.

[1] Decision, *Kramer, et al. v. Pacific Reg'l Dir.* (AS-IA) (Jan. 19, 2017).
[2] Pre-Docketing Notice and Order for Briefing on Jurisdiction, *Brian Kramer and Suzanne Kramer v. Prin. Dep. Asst. Secy. – Indian Affairs* (IBIA) (Feb. 24, 2017); Pre-Docketing Notice for the Geyser Appellants, and Order Consolidating Appeals, *Brian Kramer and Suzanne Kramer, et al. v. Prin. Dep. Asst. Secy. – Indian Affairs* (IBIA) (Feb. 28, 2017).
[3] Order Dismissing Administrative Appeals, *Kramer, et al. v. Pacific Reg'l Dir.* (AS-IA) (July 13, 2017).
[4] Petition for Reconsideration of Order Dismissing Administrative Appeals of Appellants, Brian Kramer and Suzanne Kramer, *Kramer, et al., v. Pac. Reg'l Dir.* (AS-IA) (July 31, 2017) (Petition).

disposed of an appeal filed with the IBIA. However 43 C.F.R. § 4.315 governs requests for reconsideration of IBIA decisions. It does not apply to decisions rendered by the Assistant Secretary – Indian Affairs (AS-IA) in matters over which the AS-IA has assumed jurisdiction pursuant to 25 C.F.R. § 2.20(c).

Part 2 of Title 25 of the Code of Federal Regulations governs appeals from administrative actions by Bureau of Indian Affairs officials. It provides in relevant part that AS-IA decisions "shall be final for the Department and effective immediately" unless the decision provides otherwise.[5] The Order was issued as an exercise of the non-exclusive authority of the AS-IA.[6] As the Order did not provide otherwise, it is final for the Department. While the Department's regulations do not expressly provide for reconsideration of decisions of the AS-IA, the courts recognize that the Department has the inherent power to reconsider its decisions when warranted.[7] Such power is not unlimited, however, and its exercise requires justification and good cause, neither of which Appellants have demonstrated.[8]

While 43 C.F.R. § 4.315 does not apply to Appellants' request for reconsideration, I note that Appellants' request would not meet its requirements if it did. Part 4 of Title 43 of the Code of Federal Regulations provides that requests for reconsideration may be granted "only in extraordinary circumstances" and where sufficient reason is shown therefor.[9] The rules require such requests to "state with particularity the error claimed."[10] They further specifically provide that requests for reconsideration of IBIA decisions "must contain a detailed statement of the reasons why reconsideration should be granted."[11]

Appellants nowhere claim extraordinary circumstances warranting reconsideration, and their request omits any statement of reasons why reconsideration should be granted, much less any detailed one.[12] Appellants instead assert that the Order was arbitrary and capricious and an abuse of discretion because it ignored 25 C.F.R. § 2.20(c) and the Federal Vacancies Reform Act (FVRA).[13] Yet the Order thoroughly considered and expressly rejected such claims.[14] Appellants simply seek to re-argue these issues, which is not a valid ground for reconsideration.[15]

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[5] 25 C.F.R. § 2.6(c).
[6] Order at 6.
[7] *Prieto v. United States*, 655 F.Supp. 1187 (D.D.C. 1987).
[8] *Id.*
[9] 43 C.F.R. § 4.21(d).
[10] *Id.*
[11] 43 C.F.R. § 4.315(a).
[12] *Id.*
[13] Petition at 1.
[14] *See* Order at 6, n. 39.
[15] Appellants also allege a violation of their due process rights based on a purported denial of their right to be heard on these issues. Petition at 6. However, Appellants have repeatedly briefed their arguments before, including in their response to the Tribe's motion to dismiss Appellants' appeal of the PDAS Decision for lack of jurisdiction. *See* Brief in Opposition of Appellants, Brian Kramer and Suzanne Kramer, To The Chumash Tribe's Motion To Dismiss For Lack Of Jurisdiction, *Kramer, et al. v. Principal Deputy Asst. Sec'y – Indian Affairs, et al.* (AS-IA Apr. 6, 2017).

Conclusion

Appellants request for reconsideration of the Order is denied.

Dated: August 24, 2017

Michael S. Black
Acting Assistant Secretary-Indian Affairs

CERTIFICATE OF SERVICE

I certify that on the 24th day of August, 2017, I delivered a true and correct copy of the foregoing Determination of Finality to each of the persons below by depositing an appropriately addressed copy in the United States mail.

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UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

CIVIL COVER SHEET

I. (a) PLAINTIFFS (Check box if you are representing yourself ☒)

Lewis P. Geyser, Robert B. Corlett, and T. Lawrence Jett

DEFENDANTS (Check box if you are representing yourself ☐)

UNITED STATES OF AMERICA; U.S. DEPT OF THE INTERIOR; U.S. BUREAU OF INDIAN AFFAIRS; RYAN ZINKE, Secretary of the Interior; MICHAEL S. BLACK, Acting Assistant Secretary of Indian Affairs; AMY DUTSCHKE, Director, Pacific Region - Indian Affairs

(b) County of Residence of First Listed Plaintiff Santa Barbara

(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

(c) Attorneys (*Firm Name, Address and Telephone Number*) If you are representing yourself, provide the same information.

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II. BASIS OF JURISDICTION (Place an X in one box only.)

- ☐ 1. U.S. Government Plaintiff
- ☐ 3. Federal Question (U.S. Government Not a Party)
- ☒ 2. U.S. Government Defendant
- ☐ 4. Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES-For Diversity Cases Only
(Place an X in one box for plaintiff and one for defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated or Principal Place of Business in this State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated and Principal Place of Business in Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. ORIGIN (Place an X in one box only.)

☒ 1. Original Proceeding ☐ 2. Removed from State Court ☐ 3. Remanded from Appellate Court ☐ 4. Reinstated or Reopened ☐ 5. Transferred from Another District (Specify) ☐ 6. Multidistrict Litigation - Transfer ☐ 8. Multidistrict Litigation - Direct File

V. REQUESTED IN COMPLAINT: JURY DEMAND: ☐ Yes ☒ No (Check "Yes" only if demanded in complaint.)

CLASS ACTION under F.R.Cv.P. 23: ☐ Yes ☒ No ☐ **MONEY DEMANDED IN COMPLAINT:** $

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

Violation of the Administrative Procedure Act (5 U.S.C. § 701 et. seq.)

VII. NATURE OF SUIT (Place an X in one box only).

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC 3729(a))
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce/ICC Rates/Etc.
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced & Corrupt Org.
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Info. Act
- ☐ 896 Arbitration
- ☒ 899 Admin. Procedures Act/Review of Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loan (Excl. Vet.)
- ☐ 153 Recovery of Overpayment of Vet. Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment

REAL PROPERTY CONT.
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Fed. Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury-Med Malpratice
- ☐ 365 Personal Injury-Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

TORTS PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 American with Disabilities-Employment
- ☐ 446 American with Disabilities-Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus/Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Mgmt. Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Ret. Inc. Security Act

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 835 Patent - Abbreviated New Drug Application
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405 (g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405 (g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS-Third Party 26 USC 7609

FOR OFFICE USE ONLY: Case Number:

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

VIII. VENUE: Your answers to the questions below will determine the division of the Court to which this case will be initially assigned. This initial assignment is subject to change, in accordance with the Court's General Orders, upon review by the Court of your Complaint or Notice of Removal.

QUESTION A: Was this case removed from state court? ☐ Yes ☒ No If "no, " skip to Question B. If "yes," check the box to the right that applies, enter the corresponding division in response to Question E, below, and continue from there.	STATE CASE WAS PENDING IN THE COUNTY OF:	INITIAL DIVISION IN CACD IS:
	☐ Los Angeles, Ventura, Santa Barbara, or San Luis Obispo	Western
	☐ Orange	Southern
	☐ Riverside or San Bernardino	Eastern

QUESTION B: Is the United States, or one of its agencies or employees, a PLAINTIFF in this action? ☐ Yes ☒ No If "no, " skip to Question C. If "yes," answer Question B.1, at right.	**B.1.** Do 50% or more of the defendants who reside in the district reside in Orange Co.? *check one of the boxes to the right* →	☐ YES. Your case will initially be assigned to the Southern Division. Enter "Southern" in response to Question E, below, and continue from there.
		☐ NO. Continue to Question B.2.
	B.2. Do 50% or more of the defendants who reside in the district reside in Riverside and/or San Bernardino Counties? (Consider the two counties together.) *check one of the boxes to the right* →	☐ YES. Your case will initially be assigned to the Eastern Division. Enter "Eastern" in response to Question E, below, and continue from there.
		☐ NO. Your case will initially be assigned to the Western Division. Enter "Western" in response to Question E, below, and continue from there.

QUESTION C: Is the United States, or one of its agencies or employees, a DEFENDANT in this action? ☒ Yes ☐ No If "no, " skip to Question D. If "yes," answer Question C.1, at right.	**C.1.** Do 50% or more of the plaintiffs who reside in the district reside in Orange Co.? *check one of the boxes to the right* →	☐ YES. Your case will initially be assigned to the Southern Division. Enter "Southern" in response to Question E, below, and continue from there.
		☒ NO. Continue to Question C.2.
	C.2. Do 50% or more of the plaintiffs who reside in the district reside in Riverside and/or San Bernardino Counties? (Consider the two counties together.) *check one of the boxes to the right* →	☐ YES. Your case will initially be assigned to the Eastern Division. Enter "Eastern" in response to Question E, below, and continue from there.
		☒ NO. Your case will initially be assigned to the Western Division. Enter "Western" in response to Question E, below, and continue from there.

QUESTION D: Location of plaintiffs and defendants?	**A.** Orange County	**B.** Riverside or San Bernardino County	**C.** Los Angeles, Ventura, Santa Barbara, or San Luis Obispo County
Indicate the location(s) in which 50% or more of *plaintiffs who reside in this district* reside. (Check up to two boxes, or leave blank if none of these choices apply.)	☐	☐	☒
Indicate the location(s) in which 50% or more of *defendants who reside in this district* reside. (Check up to two boxes, or leave blank if none of these choices apply.)	☐	☐	☐

D.1. Is there at least one answer in Column A? ☐ Yes ☒ No If "yes," your case will initially be assigned to the SOUTHERN DIVISION. Enter "Southern" in response to Question E, below, and continue from there. If "no," go to question D2 to the right. →	**D.2. Is there at least one answer in Column B?** ☐ Yes ☒ No If "yes," your case will initially be assigned to the EASTERN DIVISION. Enter "Eastern" in response to Question E, below. If "no," your case will be assigned to the WESTERN DIVISION. Enter "Western" in response to Question E, below. ↓

QUESTION E: Initial Division?	INITIAL DIVISION IN CACD
Enter the initial division determined by Question A, B, C, or D above: →	WESTERN

QUESTION F: Northern Counties?

Do 50% or more of plaintiffs or defendants in this district reside in Ventura, Santa Barbara, or San Luis Obispo counties? ☒ Yes ☐ No

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

IX(a). IDENTICAL CASES: Has this action been previously filed **in this court**? ☒ NO ☐ YES

If yes, list case number(s):

IX(b). RELATED CASES: Is this case related (as defined below) to any civil or criminal case(s) previously filed **in this court**?

☐ NO ☒ YES

If yes, list case number(s): 2:17-cv-01616; and, 2:17-cv-00703

Civil cases are related when they (check all that apply):

☒ A. Arise from the same or a closely related transaction, happening, or event;

☒ B. Call for determination of the same or substantially related or similar questions of law and fact; or

☒ C. For other reasons would entail substantial duplication of labor if heard by different judges.

Note: That cases may involve the same patent, trademark, or copyright is not, in itself, sufficient to deem cases related.

A civil forfeiture case and a criminal case are related when they (check all that apply):

☐ A. Arise from the same or a closely related transaction, happening, or event;

☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or

☐ C. Involve one or more defendants from the criminal case in common and would entail substantial duplication of labor if heard by different judges.

X. SIGNATURE OF ATTORNEY (OR SELF-REPRESENTED LITIGANT): /S/ DATE: October 4, 2017

Notice to Counsel/Parties: The submission of this Civil Cover Sheet is required by Local Rule 3-1. This Form CV-71 and the information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. For more detailed instructions, see separate instruction sheet (CV-071A).

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405 (g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))

NAME, ADDRESS, AND TELEPHONE NUMBER OF ATTORNEY(S)
OR OF PARTY APPEARING IN PRO PER

Lewis P. Geyser, Esq. (SBN 35942)
715 Cuatro Caminos
Solvang, CA 93463
(805) 688-2106

ATTORNEY(S) FOR: Plaintiffs

CLEAR FORM

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Lewis P. Geyser, Esq.; Robert B. Corlett; and, T. Lawrence Jett Plaintiff(s), v. United States of America; U.S. Dept. of the Interior; U.S. Bureau of Indian Affairs; Ryan Zinke, Michael S. Black, Amy Dutschke Defendant(s)	CASE NUMBER: **CERTIFICATION AND NOTICE OF INTERESTED PARTIES (Local Rule 7.1-1)**

TO: THE COURT AND ALL PARTIES OF RECORD:

The undersigned, counsel of record for Lewis P. Geyser, Esq., Robert B. Corlett, and, T. Lawrence Jett or party appearing in pro per, certifies that the following listed party (or parties) may have a pecuniary interest in the outcome of this case. These representations are made to enable the Court to evaluate possible disqualification or recusal.

(List the names of all such parties and identify their connection and interest. Use additional sheet if necessary.)

PARTY	CONNECTION / INTEREST
County of Santa Barbara	Named Plaintiff
Anne Crawford-Hall	Named Plaintiff
San Lucas Ranch, LLC	Named Plaintiff
Holy Cow Performance Horses, LLC	Named Plaintiff

Date

Signature

Attorney of record for (or name of party appearing in pro per):

Lewis P. Geyser, Esq., Robert B. Corlett, and, T. Lawrence Jett

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Attorney for Plaintiffs
Lewis P. Geyser, Robert B. Corlett,
And T. Lawrence Jett

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

LEWIS P. GEYSER, ROBERT B. CORLETT AND T. LAWRENCE JETT

Plaintiffs,

v.

UNITED STATES OF AMERICA; U.S. DEPARTMENT OF THE INTERIOR; U.S. BUREAU OF INDIAN AFFAIRS, a division of the United States Department of the Interior; RYAN ZINKE, in his official capacity as Secretary of the Interior; MICHAEL S. BLACK, in his official capacity as Acting Assistant Secretary of Indian Affairs; AMY DUTSCHKE, in her official capacity as Director, Pacific Region, Bureau of Indian Affairs,

Defendants.

Case No.:

NOTICE OF RELATED CASES

PLEASE TAKE NOTICE that, in accordance with Rule 83-1.3 of the Local Rules of the United States District Court for the Central District of California, the following action appears to be related to the above-entitled action:

Case Name	Date Filed	Case Number
County of Santa Barbara v. Kevin Haugrud, et. al.	January 28, 2017	2:17-cv-00703-SVW-AFM
Anne Crawford-Hall, San Lucas Ranch LLC, Holy Cow Performance Horses, LLC v. United States of America, et. al.	February 28, 2017	2:17-cv-01616-RGK-JC

Local Rule 83-1.3 provides that notice of a related case shall be filed and served on all parties who have appeared, stating whether any actions being filed appear: (a) to arise from the same or substantially identical transactions, happenings or events; or (b) to call for determination of the same or substantially identical questions of law and fact; or (c) likely for other reasons to entail substantial duplication of labor if heard by different judges.

The aforementioned actions arise from the same or substantially identical events as those alleged in the above-Captioned action. Thus, the aforementioned action is likely to call for determination of the same or substantially identical questions of law and fact, and to entail substantial duplication of labor if heard by different judges. Accordingly, this case is related within the meaning of Local Rule 83-1.3.

DATED: October 4, 2017 BY: /S/

Lewis P. Geyser, Esq.
Attorney for Plaintiffs
Lewis P. Geyser, Robert B. Corlett and T. Lawrence Jett