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

10 INTERIOR BOARD OF INDIAN APPEALS

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

14 Appellant

15 v.

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

19 Appellee.

Docket No: _____

[not yet assigned]

**NOTICE OF APPEAL OF
DECEMBER 24, 2014 NOTICE OF
DECISION ON THE SANTA YNEZ
BAND OF CHUMASH INDIANS
CAMP 4 FEE-TO-TRUST
APPLICATION BY PACIFIC
REGIONAL DIRECTOR**

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21 Pursuant to 25 C.F.R. Part 2 and 43 C.F.R. Part 4, the County of Santa Barbara, a
22 political subdivision of the State of California (the "County"), appeals: (a) the
23 December 24, 2014 "Notice of Decision" on the Santa Ynez Band of Chumash Indians
24 Camp 4 Fee-To-Trust Application; and (b) the October 17, 2014 issuance of a "Finding
25 of No Significant Impact for the Proposed Santa Ynez Band of Chumash Indians Camp
26 4 Fee-To-Trust Project" and the underlying Final Environmental Analysis.

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

5 2. The decisions being appealed are: (a) the December 24, 2014 Notice of
6 Decision (“NOD”) on the application of the Santa Ynez Band of Chumash Indians to
7 have five parcels of land, referred to as Assessor Parcel Numbers 141-151-051, 141-
8 140-010, 141-230-023, and 141-240-002 and totaling approximately 1,427.78 acres,
9 taken into trust; and (b) the October 17, 2014 issuance of a “Finding of No Significant
10 Impact for the Proposed Santa Ynez Band of Chumash Indians Camp 4 Fee-To-Trust
11 Project” (“FONSI”) and the incorporated findings of the May 2014 Final
12 Environmental Analysis (“Final EA”). A copy of the NOD being appealed is attached
13 as Exhibit A and made a part hereof. A copy of the FONSI being appealed is attached
14 hereto as Exhibit B and made a part hereof.

15 The County previously filed a Notice of Appeal and Statement of Reasons
16 separately appealing the October 17, 2014 FONSI and underlying Final EA, on
17 November 7, 2014. As stated in that Appeal, the County appealed the FONSI at that
18 time due to the lack of clarity in the administrative appeals process for a FONSI
19 determination that is made separate from a decision on the underlying trust acquisition
20 and based on prior Interior Board of Indian Appeals precedent. This Court issued a
21 pre-docketing notice and order requesting briefing on the threshold questions of the
22 County’s standing to appeal the FONSI, the Court’s jurisdiction to hear the FONSI
23 appeal, and the ripeness of the FONSI appeal in the absence of a decision on the fee-
24 to-trust application at issue. The County submitted its opening brief on those issues on
25 December 22, 2014.

26 This Court has not decided those threshold questions and whether the County’s
27 appeal of the October 17, 2014 FONSI and underlying Final EA can be maintained

1 separate from an appeal of the fee-to-trust decision. Further, the NOD cites the FONSI
2 and Final EA as a basis for the NOD. Accordingly, the County includes its notice of
3 appeal of the FONSI and the reasons for appealing that decision herein as well.

4 Should this Court choose to maintain separate docketing numbers for the two decisions
5 at issue, the County requests that the Court consolidate the two appeals.

6 3. Said Exhibit A consists of: a 36 page document entitled "Notice of
7 Decision," which includes a 25 page decision, 4 page distribution list, and 7 page
8 excerpt of 43 C.F.R. § 4.310, *et seq.* Said Exhibit B consists of: a 66 page document,
9 which includes a 22 page document entitled "Finding of No Significant Impact for the
10 Proposed Santa Ynez Band of Chumash Indians Camp 4 Fee-to-Trust Project;" a 31
11 page excerpt of Exhibit B to the FONSI, the 17 page Exhibit C to the FONSI, the 10
12 page Exhibit D to the FONSI, and the 3 page Exhibit E to the FONSI. Exhibit B does
13 not include the entirety of the exhibits to the FONSI or the incorporated Final EA,
14 which are voluminous and available at <http://www.chumashea.com>.

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

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

Dated: January 21, 2015

Respectfully Submitted,
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11 COUNTY OF SANTA BARBARA, a
12 Political Subdivision of the State of
California,

13 Appellant

14 v.

15 AMY DUTSCHKE, in her official
16 capacity as Director, Pacific Region,
Bureau of Indian Affairs,

17 Appellee.

Docket No: _____

[not yet assigned]

**STATEMENT OF REASONS FOR
APPEAL OF DECEMBER 24, 2014
NOTICE OF DECISION ON THE
SANTA YNEZ BAND OF
CHUMASH INDIANS CAMP 4 FEE-
TO-TRUST APPLICATION BY
PACIFIC REGIONAL DIRECTOR**

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19
20 The County of Santa Barbara (the "County") appeals: (a) the December 24,
21 2014 "Notice of Decision" on the Santa Ynez Band of Chumash Indians Camp 4 Fee-
22 To-Trust application ("NOD"); and (b) the October 17, 2014 issuance of a "Finding of
23 No Significant Impact for the Proposed Santa Ynez Band of Chumash Indians Camp 4
24 Fee-to-Trust Project" ("FONSI") and the underlying May 2014 Final Environmental
25 Analysis ("Final EA") for the following reasons and as may be further described in
26 briefs submitted hereafter. A copy of the decisions being appealed are attached hereto
27 as Exhibits A and B.

1 The County received informal notice of the NOD, which cites to and relies on
2 the FONSI and Final EA, on December 30, 2014. That notice indicated that the
3 decision could be appealed to the Interior Board of Indian Appeals within 30 days,
4 which the County has timely done.¹

5 IDENTIFICATION OF THE CASE

6 The instant appeal arises out of the Pacific Regional Director of the Bureau of
7 Indian Affairs' ("BIA") Notice of Decision of the BIA's intent to accept five parcels of
8 land totaling approximately 1,427.78 acres plus rights of way in the Santa Ynez Valley
9 of Santa Barbara County (commonly known as "Camp 4") into trust for the benefit of
10 the Santa Ynez Band of Chumash Indians ("Chumash Tribe"). (Exhibit A, NOD at p.
11 25 [attached hereto and incorporated herein].)²

12 Camp 4 is located in the middle of the Santa Ynez Valley. (Exhibit C, Final EA
13 at pp. 1-5 to 1-6 [relevant pages attached hereto and incorporated herein].) The
14 property is approximately 1.6 miles from the Chumash Tribe's Reservation and does
15 not share any boundaries with the Reservation. (*Id.* at p. 3-59.) Camp 4 is zoned
16 exclusively for agriculture and includes a largely pristine set of parcels that are home
17 to an intact, self-sustaining oak woodland and active agriculture. (*Id.* at pp. 3-59, 3-
18 81.) Currently, Camp 4 is under a Williamson Act Contract until December 31, 2022.
19 (*Id.* at p. 3-64.) The Williamson Act is a creature of state law that enables a property
20 owner to receive generous property tax reductions in exchange for a contractual

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22 ¹ As discussed in its Notice of Appeal, the County filed a separate appeal of the FONSI
23 within 30 days of the County's receipt of that decision due to the lack of clarity in the
24 administrative appeal process and based on prior Interior Board of Indian Appeals
25 precedent. This Court has not determined whether it will accept that appeal separate
26 from an appeal of the NOD and, therefore, the County reiterates the grounds for
27 appealing the FONSI/Final EA here.

28 ² The County is attaching the record documents, or portions thereof, cited in this
Statement of Reasons for the convenience of this Court and the Assistant Secretary –
Indian Affairs should he take jurisdiction over this appeal. The County will further
brief the issues when a briefing schedule is set for this matter.

1 commitment to retain the land exclusively in agriculture for a minimum of ten years on
2 a rolling basis. Cal. Gov't Code §§ 51243-51244. The property has been preserved for
3 agricultural use by a Williamson Act Contract since at least 1971.

4 In November 2013, the Chumash Tribe submitted an Amended Fee-to-Trust
5 Application to the BIA for Camp 4, which succeeded its July 2013 Fee-to-Trust
6 Application. (Exhibit D, Amended Fee-to-Trust Application [attached hereto and
7 incorporated herein].) In that application, the Chumash Tribe asserted that the trust
8 land was needed for tribal housing and supporting infrastructure, to pursue economic
9 endeavors, and to engage in long range planning and land banking. (*Id.* at pp. 8 to 10.)

10 The County submitted comments in opposition to the Amended Fee-to-Trust
11 Application on December 17, 2013. (Exhibit E, Comments on Amended Fee-to-Trust
12 Application [comment letter and enclosed comments on environmental assessment
13 without exhibits, attached hereto and incorporated herein].) The County pointed out
14 that the trust acquisition should be evaluated pursuant to 25 C.F.R. § 151.11, which
15 governs off-reservation acquisitions. (*Id.* at pp. 1, 3.)

16 In addition, the County questioned the need and purpose of the trust acquisition.
17 (*Id.* at pp. 1 to 5.) The County also opposed the acquisition due to the significant loss
18 of tax revenue, impact on public services, and jurisdictional and land use conflicts that
19 would result if the land were taken into trust. (*Id.* at pp. 1 to 3.) The County further
20 requested additional environmental review for the project and attached its comments
21 on the initial August 2013 Environmental Analysis which further explained each of the
22 County's positions. (*Id.* at pp. 4 to 5 and enclosed comments.)

23 In May 2014, the BIA released a Final EA for the proposed trust acquisition and
24 foreseeable development of Camp 4. (Exhibit C, Final EA.) The Final EA identified
25 two development alternatives for Camp 4, Alternatives A and B, and a third alternative
26 of no action, Alternative C. (*Id.* at p. 2-3, Table 2-1.) Alternative A proposes the
27 approximately 1,400 acres be converted to 143 five-acre residential lots. (*Id.*) A total

1 of 793 acres would be covered by residential homes and transportation infrastructure.
2 (*Id.*) The project site would also include 206 acres of vineyards (a decrease of 50 acres
3 from the existing 256 acres), 300 acres of open space/recreation areas, 98 acres of
4 riparian corridor, 33 acres of oak woodland conservation, and 3 acres of Special
5 Purpose Zone for utilities. (*Id.*)

6 Alternative B proposes developing 143 one-acre housing plots on Camp 4 and
7 30 acres of Tribal Facilities. (*Id.*) The residential lots and roadways would cover
8 approximately 194 acres of the project site. (*Id.*) The Tribal Facilities would be
9 12,042 square feet and include a meeting hall, kitchen, breakroom, private office (13
10 rooms), conference room, general office, training room, and circulation area. (*Id.* at p.
11 2-13.) The Tribal Facilities would host 100 special events per year with up to 400
12 attendees plus vendors at each of the events. (*Id.*) This equates to events two
13 days/nights a week, with an increase of approximately 800 visitors to the Valley each
14 week. The Tribal Facilities also would include office space for up to 40 tribal
15 employees and 250 parking spaces. (*Id.*) In addition, Alternative B would include 869
16 acres of open space/recreational use and the same acreages of vineyard, riparian
17 corridor and oak woodland conservation, and utilities as Alternative A. (*Id.* at p. 2-3,
18 Table 2-1.)

19 On July 11, 2014, the County submitted written comments to the BIA objecting
20 to many of the assumptions, conclusions, and statements made in the Final EA.
21 (Exhibit F, Comments on Final EA [attached hereto and incorporated herein].) The
22 County also established in its comments that the proposed development would have a
23 significant effect on the environment in several resource areas, and requested that the
24 BIA prepare an Environmental Impact Statement (EIS). (*Id.*) Once a party raises
25 “*substantial questions* [about] whether a project may have a significant effect on the
26 environment,” an agency violates the National Environmental Policy Act (“NEPA”) by

27 ////

1 not preparing an EIS. *Anderson v. Evans*, 371 F.3d 475, 488 (9th Cir. 2004) (internal
2 quotation marks and citation omitted).

3 Despite the County’s comments and objections, the Pacific Regional Director
4 issued a FONSI for the project on October 17, 2014, based on and incorporating the
5 inadequate Final EA in violation of NEPA and its implementing regulations. (Exhibit
6 B, FONSI [FONSI and relevant exhibit excerpts attached hereto and incorporated
7 herein].) In the FONSI, the Pacific Regional Director incorrectly found that the “trust
8 acquisition of approximately 1,411 acres plus rights of way for tribal housing”
9 (“Proposed Action”) is not a “federal action significantly affecting the quality of the
10 human environment.” (*Id.* at p. 1.) The Pacific Regional Director further improperly
11 found that “an Environmental Impact Statement (EIS) is not required” prior to taking
12 the Proposed Action. (*Id.*)

13 The Pacific Regional Director then issued an NOD for the Proposed Action on
14 December 24, 2014, stating the BIA intends to accept Camp 4 into trust and citing the
15 faulty FONSI and Final EA. (Exhibit A, NOD at pp. 24 to 25.) In addition to relying
16 on an improper environmental review, the NOD fails to adequately address the factors
17 required by 25 C.F.R. §§ 151.10 and 151.11. The inadequate NOD and supporting
18 FONSI and Final EA are being appealed.

19 STANDING TO APPEAL

20 This Court has stated that it follows the judicial doctrine of standing.
21 *Preservation of Los Olivos et al. v. Pac. Reg’l Director of BIA*, 58 IBIA 278 (2014).
22 For judicial standing, a plaintiff must show he has suffered an injury in fact, that the
23 injury is fairly traceable to the actions of the defendant, that the injury will likely be
24 redressed by a favorable decision, and that the injury is within the zone of interests to
25 be protected by the statute at issue. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-
26 61 (1992). Although this Court does not require an appellant to demonstrate standing
27 at the time of filing a Notice of Appeal, the County briefly addresses this issue at the

1 outset. The County, however, will fully brief the issue of standing if requested by this
2 Court at a later date.

3 It is well-established that a County has standing to challenge a decision to
4 accept land into trust under the fee-to-trust acquisition criteria, 25 C.F.R. §§ 151.10
5 and 151.11, and NEPA. *County of San Diego et al. v. Pac. Reg'l Director, BIA*, 58
6 IBIA 11, 23-25 (2013). As this Court has stated, the conveyance of title to land to the
7 United States in trust for a tribe “would remove the property from the County’s tax
8 rolls and from the County’s regulatory jurisdiction, both of which would adversely
9 affect what have been characterized as governmental ‘proprietary interests.’” *Id.* at 24.

10 Such an injury is traceable to the decision and would be redressed by a favorable
11 decision. *Id.* Further, a county’s land use and environmental interests are “within the
12 zone of interests protected by both the trust acquisition statute, 25 U.S.C. § 465 (and
13 the implementing regulations, §§ 151.10 and 151.11, and NEPA.” *Id.* Thus, pursuant
14 to the foregoing, the County clearly has standing to challenge the NOD and FONSI
15 under both the fee-to-trust regulations and NEPA.

16 STATEMENT OF REASONS FOR APPEAL

17 I. THE NOD FAILS TO PROPERLY CONSIDER THE FACTORS 18 REQUIRED BY 25 C.F.R. §§ 151.10 AND 151.11 AND IS AN IMPROPER EXERCISE OF DISCRETION.

19 When evaluating tribal requests to acquire land that is located outside of and
20 non-contiguous to a tribe’s reservation, the BIA must consider the regulatory criteria
21 outlined in 25 C.F.R. §§ 151.10 and 151.11. In issuing the NOD for Camp 4, the
22 Regional Director did not adequately consider all of those factors. Specifically, the
23 Regional Director failed to properly consider: (1) the need for the land; (2) the
24 purposes to which the land will be put; (3) the impact on the County from removal of
25 the land from the tax rolls; (4) jurisdictional conflicts and potential land use conflicts;
26 (5) the ability of the BIA to discharge the additional responsibilities resulting from the
27 acquisition; (6) compliance with NEPA; (7) the anticipated economic benefits

1 associated with the proposed business uses; and (8) the location of the land relative to
2 the tribe's reservation. 25 C.F.R. § 151.10 and 151.11. By failing to properly consider
3 these factors, the Regional Director improperly exercised her discretion.

4 **A. Regional Director Erred by Not Appropriately Considering the Need**
5 **for the Trust Acquisition.**

6 In analyzing the need for a trust acquisition, the statutory aims of providing
7 lands sufficient to enable Indians to achieve self-support and ameliorating the damage
8 resulting from the prior allotment policy narrow the discretionary authority for taking
9 land into trust. *Cnty. of Charles Mix v. U.S. Dep't of Interior*, 799 F. Supp. 2d 1027,
10 1039 (D.S.D. 2011), *aff'd*, 674 F.3d 898 (8th Cir. 2012). The Regional Director failed
11 to appropriately consider how taking Camp 4 into trust meets these aims despite the
12 Chumash Tribe's already existing 138-acre reservation, stated unrelated purposes for
13 the land, and stated need for only a fraction of the acreage requested to be taken into
14 trust. (Exhibit A, NOD at pp. 19-21; Exhibit E, Comments on Amended Fee-to-Trust
15 Application at pp. 3 to 5.) Further, the Regional Director merely reiterated the facts
16 provided by the Chumash Tribe with respect to the need for the land and does not
17 appear to have verified those facts or conducted an independent evaluation. (*Compare*
18 Exhibit D, Amended Fee-to-Trust Application at pp. 8-10 *with* Exhibit A, NOD at pp.
19 19-21.)

20 **B. Regional Director Erred by Not Appropriately Considering the**
21 **Purposes for the Land.**

22 The Regional Director did not consider appropriately the purposes to which the
23 land would be put. In examining the purposes for the land, the Regional Director must
24 determine the current uses of the property and then ascertain the Chumash Tribe's
25 plans for the property. *Thurston County, Nebraska v. Great Plains Reg'l Director*,
26 *BIA*, 56 IBIA 296, 307 (2013). In the NOD, the Regional Director failed to set forth
27 the current uses of the property and failed to consider proposed uses other than housing
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1 identified in the FONSI and Final EA. (Exhibit A, NOD at p. 22.) For example, the
2 FONSI and Final EA discuss the development of a 12,042 square foot Tribal Facility,
3 which will be used for approximately 100 special events per year with 400 attendees at
4 each event. (Exhibit B, FONSI at 5; Exhibit C, Final EA at p. 2-13.) The Regional
5 Director, however, did not discuss the Tribal Facility structure or the purposes for
6 which it will be used. (Exhibit A, NOD at pp. 21-22.)

7 Likewise, the Regional Director does not discuss the other uses of the Property
8 such as for open space or riparian corridors. (*Id.*) The Regional Director mentions
9 supporting infrastructure but does not discuss the types of infrastructure for which the
10 property would be used. (*Id.* at p. 22.) By failing to address all of the uses, the
11 Regional Director did not adequately address the purpose factor. *Thurston County*, 56
12 IBIA at 307-10. Further, without such information, the Regional Director cannot fully
13 assess jurisdictional or land use conflicts or the other factors required by 25 C.F.R. §§
14 151.10 and 151.11. *Id.* at 308.

15 **C. Regional Director Erred by Not Appropriately Considering the**
16 **Impact on County Tax Rolls.**

17 The Regional Director did not adequately consider the impact on the County of
18 removing Camp 4 from the County's tax rolls. As the County stated in its comments
19 on the Amended Fee-to-Trust Application, the County will lose up to \$311 million in
20 tax revenues over a fifty year time period if the land is taken into trust and developed.
21 (Exhibit E, Comments on Amended Fee-to-Trust Application at pp. 2 to 3.) The
22 Regional Director did not address or mention those comments. (Exhibit A, NOD at p.
23 22.)

24 As to the limited analysis provided by the Regional Director regarding the loss
25 of tax base, she did not analyze how the removal of the stated tax loss (\$83,255.20)
26 would be insignificant. (*Id.*) The Regional Director summarily concluded that the tax
27 loss would not be significant given the "financial contributions provided to the local
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1 community by the Tribe through employment and purchases of goods and services.”
2 (*Id.*) The County, however, provides major public services to Camp 4 and the area,
3 including law enforcement, fire protection, emergency medical response, and roadway
4 access and maintenance. (Exhibit E, Comments on Amended Fee-to-Trust Application
5 at pp. 2 to 3; Exhibit F, Final EA Comments at pp. 22 to 30; Exhibit G, FONSI
6 Comments at pp. 13 to 18, 21 to 22.) Further, the Chumash Tribe proposes to develop
7 143 residences and a much larger tribal structure on Camp 4, which will increase the
8 number of residents and employees in the area that use County parks, schools, roads,
9 and public services. (Exhibit F, Final EA Comments at pp. 22 to 30; Exhibit G,
10 FONSI Comments at pp. 13 to 22.) Thus, the need for County services in the area
11 would expand yet the County would be unable to collect property taxes or other special
12 assessments that would pay for those additional services. (Exhibit E, Comments on
13 Amended Fee-to-Trust Application at pp. 2 to 3; Exhibit F, Final EA Comments at pp.
14 22 to 30; Exhibit G, FONSI Comments at pp. 13 to 22.) The Regional Director’s
15 failure to address these issues or provide substance or context for her conclusory
16 opinion is in error. *Village of Hobart, Wisconsin v. Midwest Reg’l Director, BIA*, 57
17 *IBIA* 4, 29 (2013).

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

21 The Regional Director did not adequately consider the jurisdictional problems
22 and land use conflicts resulting from the trust acquisition. As the Regional Director
23 pointed out, Camp 4 is zoned AG-II-100 (Agriculture, with a minimum parcel size of
24 100 acres). (Exhibit A, NOD at p. 22; Exhibit F, Final EA Comments at pp. 9, 20.)
25 Surrounding uses likewise are rural. (Exhibit C, Final EA at Fig. 3-8; Exhibit F, Final
26 EA Comments at pp. 34, 44 to 45; Exhibit G, FONSI Comments at pp. 9 to 13, 24 to
27 25, 33 to 34.) The development of 143 residences and an over 12,000 square foot
28 tribal facility with parking for 250 cars would constitute a change in the current land

1 use that is inconsistent with surrounding uses. (Exhibit F, Final EA Comments at pp.
2 16 to 22, 34, 44 to 45; Exhibit G, FONSI Comments at pp. 9 to 13, 33 to 34.)
3 Essentially, it would be an urban development in the middle of a rural area.

4 As stated in its comments on both the Fee-to-Trust Application and Final EA,
5 such a development contravenes rural area policy countywide and is incompatible with
6 the County's General Plan, Santa Ynez Community Plan, and County land use
7 regulations. (Exhibit F, Final EA Comments at pp. 9 to 14, 16 to 22, 30-32; Exhibit G,
8 FONSI Comments at 9 to 13.) It would create conflicts with the open space,
9 agricultural, and ranch uses on surrounding and adjacent properties and cause
10 significant health, safety, and regulatory problems for the County. (Exhibit F, Final
11 EA Comments at pp. 9 to 14, 16 to 34; Exhibit G, FONSI Comments at pp. 9 to 22, 24
12 to 25.) The Regional Director improperly failed to consider the numerous data and
13 comments on these points. *Thurston County*, 56 IBIA 307-10.

14 In addition, the Regional Director ignored concerns regarding jurisdictional
15 problems raised by the County. With respect to this point, the Regional Director
16 stated that the Chumash Tribe has consistently been cooperative with local government
17 and service providers to mitigate adverse effects and cited agreements with County
18 Fire and the Sheriff's Office. (Exhibit A, NOD at pp. 22-23.) Those agreements,
19 however, relate to services on the Reservation, not Camp 4 or lessening Camp 4's
20 impacts. (Exhibit F, Final EA Comments at pp. 23-25; Exhibit G, FONSI Comments
21 at pp. 14 to 18.) Further, they do not address the jurisdictional issues raised by the
22 County such as its inability to effectively manage roadways, the quality of waterways,
23 water supply, air quality and other resource and capacity issues addressed by its land
24 use regulations and plans. (Exhibit F, Final EA Comments at pp. 9 to 14, 16 to 32, 34
25 to 35, 44 to 45; Exhibit G, FONSI Comments at pp. 9 to 22, 24 to 25, 33 to 34.)

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1 Tribal Facility. (Exhibit C, Final EA at p. 2-13.) While the exact purposes of the
2 Tribal Facility are vague and not properly defined, it is clear that it will hold 100
3 special events per year for approximately 400 persons plus vendors and also house
4 employees. (*Id.* p. 2-13.) The use of the Tribal Facility appears to be a business use at
5 least in part and neither the Chumash Tribe’s comments nor the Regional Director’s
6 NOD address this factor.

7 **H. Regional Director Erred by Not Appropriately Considering the Off-
8 Reservation Location of the Land.**

9 Finally, the off-Reservation location of the land was not adequately considered.
10 Camp 4 is non-contiguous to the Reservation. In such circumstances, the BIA must
11 give greater scrutiny to a tribe’s justification of anticipated benefits from the
12 acquisition and greater weight to the concerns raised by local government with respect
13 to regulatory jurisdiction and tax losses. 25 C.F.R. § 151.11(b). There is no indication
14 that the Regional Director even addressed this heightened scrutiny, and certainly no
15 indication that the Regional Director gave additional weight to the County’s concerns
16 in the noted areas. (Exhibit A, NOD at p. 24.)

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

20 **II. THE NOD AND FONSI VIOLATE NEPA AND ITS IMPLEMENTING
21 REGULATIONS.**

22 **A. The BIA Failed to Prepare an Environmental Impact Statement For
23 Camp 4 in Violation of NEPA and Implementing Regulations.**

24 The BIA must comply with NEPA and its implementing regulations in
25 considering a trust acquisition proposal. Under NEPA, 42 U.S.C. § 4321, *et seq.*, the
26 Council on Environmental Quality’s (“CEQ”) implementing regulations, 40 C.F.R.
27 Part 1500, and the Department of Interior’s implementing regulations, 43 C.F.R. Part
28 46, the BIA must prepare an EIS when its proposed federal action will have a

1 significant impact on the environment or raises substantial questions about the
2 environmental impacts of the action. 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1502.3; 43
3 C.F.R. § 46.400; *Nat'l Resources Defense Council v. Duvall*, 777 F.Supp. 1533, 1537
4 (E.D. Cal. 1991).

5 The Proposed Action raises substantial questions about the environmental
6 impacts of the action as to both its context and intensity. 40 C.F.R. § 1508.27.
7 (Exhibit F, Final EA Comments at pp. 9 to 35; Exhibit G, FONSI Comments at pp. 8 to
8 25.) The trust acquisition is for over 1,400 acres of land zoned for agricultural use in a
9 largely rural area. (Exhibit F, Final EA Comments at pp. 15 to 22, 30 to 32, 34, 44 to
10 45; Exhibit G, FONSI Comments at pp. 9 to 13, 33 to 34.) The proposed
11 developments of that land would convert the agricultural uses to residential, event, and
12 tribal facility uses. (Exhibit C, Final EA at p. 2-3, Table 2-1.) The loss of agricultural
13 land is of great significance to the State, region, and locality, as agriculture provides
14 economic and environmental benefits to the public. (Exhibit F, Final EA Comments at
15 pp. 9 to 14; Exhibit G, FONSI Comments at pp. 9 to 13.)

16 Further, at a minimum, the Proposed Action will bring substantially more
17 residents, employees and visitors to a largely agricultural area and change the land use
18 on Camp 4. (Exhibit G, FONSI Comments at pp. 10 to 14, 33-34.) These population
19 and land use changes: (a) implicate unique geographic considerations such as
20 conversion of prime agricultural farmland; (b) threaten land use and regulatory
21 requirements imposed for the protection of the environment and community; (c) impact
22 public health and safety concerns, such as the demand for public safety services,
23 groundwater and wastewater resources, air quality, and traffic control; (d) impact
24 threatened or endangered species habitat and other unique habitat involving oak trees;
25 (e) create controversy as shown by the debate among many knowledgeable, interested
26 parties as to the environmental effects of the project; and (f) have adverse impacts. *See*

1 40 C.F.R. § 1508.27(b). (Exhibit F, Final EA Comments at pp. 15 to 35; Exhibit G,
2 FONSI Comments at pp. 9 to 25.)

3 Based on the magnitude of the development in the proposed setting and
4 numerous, significant issues implicated, the Proposed Action at least raises questions
5 about its effect on the environment. The County need only raise *substantial questions*
6 as to whether the project *may* have significant environmental impacts. *Idaho Sporting*
7 *Cong. v. Thomas*, 137 F.3d 1146, 1149 (9th Cir. 1998) (quotation omitted), *overruled*
8 *on other grounds in The Lands Council v. McNair*, 537 F.3d 981 (9th Cir. 2008); *Blue*
9 *Mountain Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1212 (9th Cir. 1998).
10 Since the County has done so, the BIA is required to prepare an EIS pursuant to NEPA
11 and erred by not doing so.

12 **B. The Mitigation Measures Proposed in the FONSI/Final EA Are**
13 **Inadequate and Do Not Reduce Impacts to an Insignificant Level; an**
14 **EIS Is Still Required under NEPA and Implementing Regulations.**

15 “Mitigation measures [must] constitute an adequate buffer against the negative
16 impacts that result from the authorized activity to render such impacts so minor as to
17 not warrant an EIS.” *Bark v. Northrop*, 2014 WL1414310, at *12 (D. Or. 2014); *see*
18 *also O’Reilly v. U.S. Army Corps of Eng’rs*, 477 F.3d 225, 231 (5th Cir. 2007). The
19 mitigation measures must be “developed to a reasonable degree.” *National Parks &*
20 *Conservation Ass’n v. Babbitt*, 241 F.3d 722, 734 (9th Cir. 2001), *abrogated on other*
21 *grounds*. “A perfunctory description, or mere listing of mitigation measures, without
22 supporting analytical data, is insufficient to support a finding of no significant impact.”
23 *Id.* (internal quotation marks omitted.)

24 The mitigation measures proposed in the FONSI/Final EA do not sufficiently
25 minimize or avoid impacts in the areas of land resources, water resources, air quality,
26 biological resources, transportation and circulation, public services, and visual
27 resources. (Exhibit F, Final EA Comments at pp. 35 to 40; Exhibit G, FONSI
28 Comments at pp. 25 to 27.) They do not provide adequate protection against the

1 significant adverse impacts of the Proposed Action. (*Id.*) An EIS is required to study
2 these significant impacts.

3 In addition, the purported mitigation measures in the FONSI/Final EA do not
4 provide the detail and discussion required to support a finding of no significant impact.
5 For many of the resources, the mitigation measures simply list Best Management
6 Practices without a discussion of their effectiveness or ability to reduce a specific
7 impact to an insignificant level. (Exhibit B, FONSI at pp. 7-11; Exhibit C, Final EA at
8 pp. 25 to 27; Exhibit F, Final EA Comments at pp. 36 to 37.) This approach is
9 insufficient under NEPA. *Wilderness Soc. v. Bosworth*, 118 F.Supp.2d 1082, 1107 (D.
10 Mont. 2000); *Blue Mountains Biodiversity Project v. Blackwood*, 161 F.3d 1208, 1214
11 (9th Cir. 1998). Likewise, the “protective” mitigation measures identified in the
12 FONSI/Final EA provide no data regarding their effectiveness or how they mitigate a
13 particular impact in the resource category. (*See, e.g.*, Exhibit B, FONSI at p. 11;
14 Exhibit F, Final EA Comments at pp. 37 to 38; Exhibit G, FONSI Comments at pp. 25
15 to 26.) Without some reasoned discussion as to how a mitigation measure actually
16 reduces impacts to an insignificant level, the environmental consequences cannot be
17 evaluated properly in violation of NEPA.

18 **C. The FONSI/Final EA Are Based on an Inappropriate Present-Day**
19 **Baseline in Violation of NEPA and Implementing Regulations.**

20 In analyzing the effects of a proposed federal action, NEPA requires an agency
21 to set forth the baseline conditions. *Half Moon Bay Fisherman’s’ Marketing Ass’n v.*
22 *Carlucci*, 857 F.2d 505, 510 (9th Cir.1988). The NEPA baseline consists of the pre-
23 project environmental conditions. *Id.* The FONSI/Final EA use a present-day baseline
24 to assess the environmental impacts of the proposed developments. (Exhibit C, Final
25 EA at pp. 2-9, 3-1.) The proposed developments under Alternatives A and B,
26 however, will not commence until 2023 because Camp 4 is under a Williamson Act
27 Contract requiring agricultural use of the land until December 31, 2022. (Exhibit C,
28

1 Final EA at p. 2-9.) Thus, the proposed development would occur almost a decade
2 after the baseline date used for analyzing some resource impacts. (*Id.*)

3 By using this present-day baseline, the FONSI/Final EA are incomplete and
4 flawed, and likely underestimate the Proposed Action’s potential impacts on numerous
5 resources. (Exhibit F, Final EA Comments at pp. 6 to 8; Exhibit G, FONSI Comments
6 at pp. 6 to 7.) Further, this approach inhibits the goal of NEPA – to ensure that
7 “environmental information is available to public officials and citizens before
8 decisions are made and before actions are taken.” 40 C.F.R. § 1500.1(b) (emphasis
9 added). (Exhibit F, Final EA Comments at p. 8; Exhibit G, FONSI Comments at p. 7.)
10 The Proposed Action should be delayed until pre-project conditions, including the
11 appropriate baseline, and actual environmental impacts can be determined.
12 Accordingly, the FONSI/Final EA, and NOD which relies on them, violate NEPA and
13 should be vacated.

14 **D. The BIA Failed to Adequately Consider the Cumulative Impacts of**
15 **the Proposed Action in Violation of NEPA and Implementing**
16 **Regulations.**

17 Any EA must fully assess the cumulative impacts of a project. *Te-Moak Tribe*
18 *of Western Shoshone of Nev. v. U.S. Dept. of Interior*, 608 F.3d 592, 602-03 (9th Cir.
19 2010). In assessing cumulative impacts, “some quantified or detailed information is
20 required. Without such information, neither the courts nor the public ... can be assured
21 that the [agency] provided the hard look that it is required to provide.” *Id.* at 603
(citation omitted).

22 The FONSI/Final EA unlawfully use perfunctory general statements about
23 possible effects in discussing cumulative impacts. (Exhibit F, Final EA Comments at
24 pp. 51 to 52; Exhibit G, FONSI Comments at pp. 28 to 29.) In addition, the BIA did
25 not include all reasonably foreseeable development in the area. (Exhibit F, Final EA
26 Comments at pp. 49 to 51; Exhibit G, FONSI Comments at pp. 28 to 29.) For instance,
27 until responding to comments on the Final EA in the FONSI, the BIA did not mention

1 the 6.9 acres of land in the Valley approved by the BIA to be taken into trust for the
2 Chumash Tribe or other proposed trust acquisitions in the area. (Exhibit G, FONSI
3 Comments at pp. 28 to 29.) Nor did it show that it accounted for the significant casino
4 expansion on the Chumash Tribe’s Reservation, which is projected to bring 1,200
5 additional patrons daily to the casino. (*Id.*) As to the 6.9 acres, the Chumash Tribe
6 plans to develop a cultural center, museum, and park on the land, as well as a gift shop
7 and support offices, which would bring more visitors and workers to the area and more
8 environmental impacts. *Preservation of Los Olivos and Preservation of Santa Ynez v.*
9 *Pacific Regional Director, Bureau of Indian Affairs*, 58 IBIA 278 (2014). The BIA did
10 not properly analyze those impacts. (Exhibit G, FONSI Comments at pp. 28 to 29.)
11 The BIA also did not address all future actions that are reasonably foreseeable in 2023,
12 the year in which the Chumash Tribe plans to develop Camp 4. (*Id.*; Exhibit F, Final
13 EA Comments at pp. 49 to 51; Exhibit G, FONSI Comments at pp. 28 to 29.)

14 In summary, the FONSI/Final EA do not adequately quantify the cumulative
15 impacts or provide enough detail from which the public can be assured the cumulative
16 impacts were sufficiently studied and mitigated. The BIA’s failure to properly analyze
17 the cumulative impacts of its Proposed Action violates NEPA and the NOD and
18 FONSI/Final EA should be vacated.

19 **E. The BIA Failed to Analyze Viable Alternatives in the FONSI/Final**
20 **EA in Violation of NEPA and Implementing Regulations.**

21 NEPA requires agencies to study, develop and describe appropriate alternatives
22 to the proposed federal action. 42 U.S.C. § 4332(2)(E); 40 C.F.R. § 1508.9(b); *see*
23 *also* 43 C.F.R. § 46.310. An agency must “rigorously explore and objectively evaluate
24 all reasonable alternatives.” 40 C.F.R. § 1502.14(a)(4). “The existence of a viable but
25 unexamined alternative renders an [EA] inadequate.” *Friends of Yosemite Valley v.*
26 *Kemphorne*, 520 F.3d 1024, 1038 (9th Cir. 2008) (citation omitted).

1 The FONSI/Final EA fails to adequately analyze the “No Action” Alternative
2 and other reasonable project alternatives. (Exhibit F, Final EA Comments at pp. 52 to
3 54; Exhibit G, FONSI Comments at pp. 29 to 31.) As to the No-Action Alternative,
4 the FONSI/Final EA do not analyze the residential development that is reasonably
5 foreseeable if the proposed development does not go forward, which could include
6 some residential development. (Exhibit F, Final EA Comments at p. 52; Exhibit G,
7 FONSI Comments at p. 30.) Additionally, the primary purpose of the proposed federal
8 action is to provide housing to accommodate the Chumash Tribe’s current members
9 and anticipated growth, which could be accomplished by taking fewer parcels into
10 trust, by less development, and/or through a rebuild of the Reservation. *See Friends of*
11 *Yosemite Valley*, 520 F.3d at 1038. (Exhibit F, Final EA Comments at pp. 53-54;
12 Exhibit G, FONSI Comments at p. 30.)

13 Further, the purpose could be accomplished in another location. *Ilio'ulaokalani*
14 *Coalition v. Rumsfeld*, 464 F.3d 1083, 1098 (9th Cir. 2006). (Exhibit F, Final EA
15 Comments at p. 53; Exhibit G, FONSI Comments at p. 31.) Camp 4 is non-contiguous
16 to the Chumash Tribe Reservation and therefore other off-Reservation locations could
17 be considered. (Exhibit F, Final EA Comments at p. 53; Exhibit G, FONSI Comments
18 at p. 31.) The BIA, however, did not study such feasible alternatives. (Exhibit B,
19 FONSI at pp. 5 to 6.) By omitting a detailed analysis of feasible alternatives, the BIA
20 violated NEPA and the NOD and FONSI/Final EA should be vacated.

21 **F. The FONSI/Final EA Are Based on Assumptions, Factual**
22 **Inaccuracies, and Unsupported Conclusions in Violation of NEPA**
23 **and Implementing Regulations.**

24 NEPA requires federal agencies to “take a hard look at the environmental
25 consequences of their actions.” *Neighbors of Cuddy Mountain v. Alexander*, 303 F.3d
26 1059, 1070 (9th Cir. 2002) (citations omitted); *see also* 42 U.S.C. § 4332(2)(C); 40
27 C.F.R. § 1500.1. Failing to verify the factual accuracy of an EA violates NEPA as it
28 shows the agency did not take a hard look at the actual proposed federal action. *Native*

1 *Ecosystems Council v. U.S. Forest Service*, 418 F.3d 953, 964 (9th Cir. 2005); *see also*
2 40 C.F.R. § 1500.1(b). Further, conclusions in an EA must be supported by “some
3 quantified or detailed information.” *Sierra Nev. Forest Protection Campaign v.*
4 *Weingardt*, 376 F.Supp.2d 984, 991 (E.D. Cal. 2005). The FONSI/Final EA prepared
5 by the BIA do not take the required “hard look” at the environmental impacts of the
6 Proposed Action.

7 First, the FONSI/Final EA do not provide enough information about the basic
8 components of the proposed developments, such as the full scope of the residential or
9 tribal facilities development. (Exhibit F, Final EA Comments at pp. 40 to 42; Exhibit
10 G, FONSI Comments at pp. 31 to 32.) Without this information, the County lacks
11 basic components of the project, including the number of new people that would be
12 accessing the property for events or residing or staying on the property. (*Id.*) That
13 information is key to fully analyzing potential environmental impacts. *See Sierra Club*
14 *v. Babbitt*, 69 F.Supp.2d 1202, 1218 (E.D. Cal. 1999).

15 Second, as to agricultural resources, the FONSI/Final EA fails to: (a)
16 sufficiently analyze the proposed development’s compatibility with and impact on
17 adjacent land uses; and (b) adequately address the grazing operations on the property.
18 (Exhibit F, Final EA Comments at pp. 42 to 44; Exhibit G, FONSI Comments at pp. 32
19 to 33.) Third, the FONSI/Final EA do not provide the necessary analysis to determine
20 land use compatibilities but conclude without basis that the proposed development will
21 be similar to other developments in the area. (Exhibit F, Final EA Comments at pp. 44
22 to 45; Exhibit G, FONSI Comments at pp. 33 to 34.) Fourth, the FONSI/Final EA
23 contain many factual inaccuracies, conclusory statements, and improper assumptions in
24 the analysis of fire protection and emergency medical services, law enforcement, and
25 traffic. (Exhibit F, Final EA Comments at pp. 45 to 49; Exhibit G, FONSI Comments
26 at pp. 34 to 35.) These errors and omissions render the FONSI/Final EA inadequate
27 under NEPA, and insufficient to support the NOD.

1 **III. The BIA Failed to Provide Sufficient Information for Informed Public**
2 **Comment by Introducing New Analysis in the FONSI in Violation of NEPA**
3 **and Implementing Regulations.**

4 NEPA requires the BIA to “involve environmental agencies, applicants, and the
5 public, to the extent practicable” in the preparation of an EA. 40 C.F.R. § 1501.4(b).
6 “[T]he public [should] be given as much environmental information as is practicable,
7 prior to completion of the EA, so that the public has a sufficient basis to address those
8 subject areas that the agency must consider in preparing the EA.” *Weingardt*, 376
9 F.Supp.2d at 991; *see also* 40 C.F.R. § 1506.6(a). An agency should “permit members
10 of the public to weigh in with their views and thus inform the agency decision-making
11 process.” *Bering Strait Citizens for Responsible Res. Dev. v. United States Army*
12 *Corps of Eng.*, 524 F.3d 938, 953 (9th Cir.2008).

13 The FONSI contained new information and analysis that was provided to the
14 public for the first time, without a comment period for weighing in on the new
15 information. For example, the FONSI introduced new mitigations, such as the
16 provision of a Chumash Tribe Police Department and measures related to the Vernal
17 Pool Fairy Shrimp and California red-legged frog. (Exhibit B, FONSI at p. 1
18 [discussing new exhibits to FONSI] and pp. 7, 16 to 17.) Further, the FONSI provides
19 new information and analysis concerning certain resource areas such as water usage,
20 solid waste, and biological resources as well as letters from the U.S. Fish and Wildlife
21 Service and State Historic Preservation Office regarding biological and cultural
22 resources. (*Id.* at p. 1 [discussing news exhibits to FONSI] and pp. 7, 16 to 17.)

23 The public did not have the opportunity to comment on the new information,
24 mitigations, and analysis presented in the FONSI as the BIA did not set a public
25 comment period in its Notice of Availability. (Exhibit H, Notice of Availability of
26 FONSI.) Introducing new bases for the BIA’s finding of no significant impact without
27 giving the public an opportunity to weigh in on that information prior to making a final
28 decision violates NEPA. Accordingly, the NOD and FONSI/Final EA should be

1 vacated. *Envtl. Protec. Info. Ctr. v. Blackwell*, 389 F. Supp. 2d 1174, 1204-05 (N.D.
2 Cal. 2004).

3 **RELIEF REQUESTED**

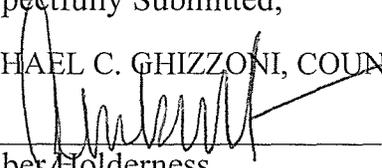
4 The County of Santa Barbara, with this Appeal, requests the following relief:

- 5 1. That the December 24, 2014 NOD of the Regional Director approving the
6 Chumash Tribe's Fee-to-Trust Application and taking title to Camp 4 be
7 vacated in its entirety as being erroneous and an improper use of discretion;
- 8 2. That the October 17, 2014 FONSI issued by the Regional Director be vacated
9 in its entirety as being ultra vires and in violation of NEPA;
- 10 3. That the processing of the fee-to-trust acquisition be stayed until the issues of
11 this appeal are resolved;
- 12 4. That the NOD and FONSI be remanded to the Regional Director with
13 instructions that the Regional Director reconsider approval of the Fee-to-
14 Trust Application following the preparation of an Environmental Impact
15 Statement and a proper assessment of the factors contained in 25 C.F.R. §§
16 151.10 and 151.11; and
- 17 5. That the NOD and FONSI be remanded to the Regional Director with
18 instructions that the Regional Director issue the proper factual and legal
19 findings following the appropriate environmental review and regulatory
20 analysis.

21 Dated: January 21, 2015

Respectfully Submitted,

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23 
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UNITED STATES DEPARTMENT OF THE INTERIOR
OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS

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

Appellant

v.

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

Appellee.

Docket No: _____

[not yet assigned]

PROOF OF SERVICE

I, Natalie M. Warwick, declare that I am over the age of eighteen and not a party to this cause. I am employed in, or a resident of the County of Santa Barbara, where the mailing occurs. My business address is 105 E. Anapamu Street, Suite 201, Santa Barbara, CA 93101.

I further declare that I am readily familiar with the business practice of processing of correspondence for mailing with the United States Postal Service this same day in the ordinary course of business.

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I caused to be served the following documents described as: **(1) Notice of Appeal of December 24, 2014 Notice of Decision on the Santa Ynez Band of Chumash Indians Camp 4 Fee-To-Trust Application By Pacific Regional Director;** and **(2) Statement of Reasons for Appeal of December 24, 2014 Notice of Decision on the Santa Ynez Band of Chumash Indians Camp 4 Fee-To-Trust Application By Pacific Regional Director,** both dated January 21, 2015, by placing a true and correct copy of these documents in a separate envelope addressed to each addressee, known or believed to be a person or party interested in this matter, respectively, as follows:

SEE ATTACHED DISTRIBUTION LIST

I declare under penalty of perjury that the foregoing is true and correct.
Executed this 21st day of January, 2015.



Natalie M. Warwick

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