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16 BARBARA, CALIFORNIA, NO  
17 MORE SLOTS, LEWIS P. GEYSER  
18 AND ROBERT B. CORLETT,  
19 PRESERVATION OF LOS OLIVOS,  
20 SANTA YNEZ VALLEY CONCERNED  
21 CITIZENS, ANNE (NANCY)  
22 CRAWFORD-HALL, and SANTA YNEZ  
23 VALLEY ALLIANCE,

24 Appellants

25 v.

26 PACIFIC REGIONAL DIRECTOR,  
27 BUREAU OF INDIAN AFFAIRS,

28 Appellee.

**APPELLANT COUNTY OF SANTA  
BARBARA'S REPLY BRIEF IN  
SUPPORT OF APPEAL OF  
DECEMBER 24, 2014 NOTICE OF  
DECISION ON THE SANTA YNEZ  
BAND OF CHUMASH INDIANS  
CAMP 4 FEE-TO-TRUST  
APPLICATION AND OCTOBER 17,  
2014 FINDING OF NO  
SIGNIFICANT IMPACT BY  
PACIFIC REGIONAL DIRECTOR**

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1 **I. INTRODUCTION.**

2 In their response briefs, Appellee the Pacific Regional Director (“Regional Director”)  
3 and Real-Party-in-Interest the Santa Ynez Band of Chumash Indians (the “Tribe”) (collectively  
4 “Respondents”) characterize the County’s (and other appellants’) appeal arguments as merely  
5 disagreeing with the conclusions reached in the Camp 4 Notice of Decision (“NOD”) and  
6 Finding of No Significant Impact (“FONSI”), and Final Environmental Analysis (“Final EA”).  
7 That characterization is inaccurate. Rather than simply disagreeing with conclusions, the  
8 County addresses the failed process, including the lack of adequate analysis and sufficient  
9 record evidence for the conclusions reached. Such “disagreement” is appropriate and the very  
10 type for which judicial review is permitted in these types of cases.

11 Further, Respondents fail to refute the County’s valid points and establish the Regional  
12 Director properly analyzed the statutory fee-to-trust criteria or engaged in the appropriate level  
13 of environmental review. They instead rehash the same inadequate analysis from the NOD  
14 and FONSI. In addition, they incorrectly argue that appellants have a heightened burden of  
15 proof that does not apply to analyzing the need for an Environmental Impact Statement  
16 (“EIS”) rather than an EA. Respondents also attempt to avoid additional analysis by  
17 improperly narrowing the scope of the project to a “zoning change,” which minimizes the  
18 impacts, avoids any actual alternatives analysis, and creates a *fait accompli* transaction. Such  
19 an approach is the antithesis of the National Environmental Protection Act (“NEPA”), which  
20 is to ensure review without a predetermined outcome. Thus, the County again respectfully  
21 requests that the NOD and FONSI be vacated and remanded for appropriate reconsideration.

22 **II. ARGUMENT.**

23 **A. NEITHER THE REGIONAL DIRECTOR NOR THE TRIBE HAS**  
24 **ESTABLISHED THAT THE REGIONAL DIRECTOR PROPERLY**  
25 **ANALYZED THE FACTORS REQUIRED BY 25 C.F.R. §§ 151.10 AND 151.11.**

26 As outlined in the County’s Opening Brief, the Regional Director did not adequately  
27 consider all of the factors outlined in 25 C.F.R. sections 151.10 and 151.11 in issuing the  
28 NOD. In response, the Regional Director and Tribe fail to cite evidence in the administrative

1 record that remedies those inadequacies and rather cite the prior, inadequate findings. Thus,  
2 the record shows the NOD must be remanded for reconsideration of the fee-to-trust criteria.

3 1. **The Regional Director and Tribe Do Not Establish the Need for the Trust**  
4 **Acquisition Was Adequately Addressed.**

5 As previously stated, a tribe must establish a need for the amount of land it seeks to  
6 have transferred and the BIA then must determine that the land is “necessary” to facilitate  
7 tribal self-determination, economic development, or tribal housing. 25 C.F.R. §§  
8 151.10(a)(3), 151.10(c); *City of Lincoln v. U.S. Dept. of Interior*, 229 F.Supp.2d 1109, 1124  
9 (D. Or. 2002). Respondents do not establish this need factor was met. Instead, they argue that  
10 the Tribe does not have to show the need for each acre or that the land needs to be held in trust  
11 rather than fee status. Neither point addresses the County’s arguments though.

12 As to the first point, the County did not advocate that every individual acre of land  
13 must be accounted for in addressing the need factor. (County’s Opening Brief at 4-5.) Rather,  
14 the County argued that the stated need for the land – housing and a tribal facility – requires  
15 only 227 acres of the over 1400 acres at issue. (*Id.* at 5.) Thus, the Tribe made no showing of  
16 a need for the majority of the acreage to be taken into trust. In fact, the Tribe did not show a  
17 need for all parcels requested. The development is proposed to occur on Parcels 2 and 4.  
18 (AR0194.00794.) As to Parcels 1, 3, and 5, the Tribe has made no showing as to the need for  
19 the parcels and the Regional Director has not adequately analyzed whether they are necessary.  
20 (*Id.*) If the Tribe had applied for each parcel separately, it would have stated its need for each  
21 one. By applying for them together, the Tribe is circumventing the required “need” showing.

22 The cases cited by the Tribe and Regional Director generally address instances in  
23 which the Regional Director did not address a portion or certain acres of a parcel, not whole  
24 parcels or substantial acreages, or parcels of much less acreage. *See, e.g., State of New York v.*  
25 *Acting Eastern Reg’l Director*, 58 IBIA 323, 323 (2014) (addressing request to take one parcel  
26 of 39 acres into trust); *County of Sauk, Wisconsin v. Midwest Reg’l Director*, 45 IBIA 201,  
27 202 (2007) (involving request to take one parcel of 5 acres into trust); *Cass County,*

1 *Minnesota v. Midwest Reg'l Director*, 42 IBIA 243, 243-44 (2006) (involving three tracts of  
2 land totaling approximately 1.5 acres and setting forth intended needs and use for each  
3 separate property). Therefore, in the cases cited by Respondents, the Regional Director would  
4 have had to take less than a full parcel into trust if it engaged in an acre by acre analysis or  
5 was addressing situations involving a less significant amount of acreage than is at issue here.

6 Here, there is no justification for taking three separate parcels into trust or some 1,200  
7 acres of land. Regardless if the Regional Director has some “flexibility” in addressing the  
8 need for a trust acquisition, some evaluation of each parcel at issue and a substantial portion  
9 of the land is required to satisfy the need factor. That evaluation is lacking. The Tribe simply  
10 stated the land and all parcels are needed and the Regional Director then endorsed that view,  
11 which is no analysis at all and inadequate. (AR0080.00009-00010, AR0123.00020-00021.)

12 **2. The Regional Director and Tribe Do Not Establish that the Regional**  
13 **Director Appropriately Considered the Purposes for the Land.**

14 Respondents incorrectly argue that the record contains sufficient information regarding  
15 the purposes for the land and that *Thurston County, Nebraska v. Great Plains Reg'l Director*,  
16 56 IBIA 296, 307 (2013) only applies to situations involving inconsistencies in the record.  
17 *Thurston County*, however, sets forth the basic requirements for examining the purpose factor.  
18 It states: “[i]n examining the purpose(s) or use(s) for any Tribal property proposed for trust  
19 acquisition, BIA must first determine the current use of the property, then ascertain the Tribe’s  
20 plans for the property.” *Thurston County*, 56 IBIA at 307. “Doing so not only facilitates a  
21 clear understanding for BIA of how the property will be used for purposes of determining  
22 whether to grant the fee-to-trust application, but also assists local jurisdictions in their  
23 planning for any ongoing services that may be needed and in commenting on a fee-to-trust  
24 land acquisition.” *Id.* Further, “knowledge of the current and intended uses of the land also  
25 informs and facilitates BIA’s consideration of whether there may be jurisdictional or land use  
26 conflicts (§ 151.10(f)) and determines the level of environmental review required under the  
27 National Environmental Policy Act (NEPA).” *Id.* at p. 308. Thus, *Thurston County* stands for

1 the holding that the purpose analysis is an important cornerstone of the fee-to-trust analysis  
2 and environmental review, and the purposes for the land must be clear and complete.

3 The NOD here, however, states that the “Tribe intends to provide tribal housing and  
4 supporting infrastructure on a portion of the property,” with the remainder to be “used for  
5 economic pursuits (vineyards and a horse boarding stable), as well as for future long range  
6 planning and land banking.” (AR0123.00021-00022.) The Regional Director did not set forth  
7 the current uses of the property or consider all of the proposed uses identified in the FONSI  
8 and Final EA. (*Id.*) For instance, the NOD vaguely discusses that the land “will continue to  
9 be used for economic pursuits,” but does not describe the scope of those current uses.  
10 (AR0123.00022.) Further, the FONSI and Final EA discuss the development of a 12,042  
11 square foot Tribal Facility, which will be used for special events and house employees, which  
12 is not discussed in the application or NOD. (AR0237.00005; AR0194.00029; AR0123.00022;  
13 *see also* AR0194.00019 [mentioning other uses for property such as open space and  
14 infrastructure that are not discussed in NOD].) A mention of those uses in the Final EA  
15 without analysis is insufficient. By failing to address all uses, the Regional Director did not  
16 adequately address the purpose factor, which directly affects the analysis of jurisdictional  
17 problems, land use conflicts, and environmental review.

18 **3. The Regional Director and Tribe Do Not Establish that the Regional**  
19 **Director Appropriately Considered the Impact on County Tax Rolls.**

20 With respect to impacts to the tax rolls, the Regional Director did not address the  
21 County’s comments that it would lose up to \$311 million in tax revenues over a fifty year time  
22 period if the land is taken into trust and developed. (County’s Opening Brief, Ex. A at 2- 3.)  
23 In response, the Tribe and Regional Director argue the Regional Director only needs to look at  
24 the state of the property at the time of the acquisition, not potential tax income resulting from  
25 later development, and characterize the Tribe’s proposed future development as speculative.

26 First, the case cited by the Tribe for the proposition that a tax analysis must only  
27 address the state of the property at the time of an acquisition does not hold so. Rather, in

1 *Thurston County*, the IBIA was discussing the tax baseline for the analysis. *Thurston County*,  
2 56 IBIA at 312. In that case, Thurston County argued that the total amount of trust land in the  
3 county should be considered. *Id.* The IBIA disagreed finding historical losses were not  
4 directly relevant to determining how a proposed trust acquisition under current consideration  
5 may affect the county “because reductions in revenues in past tax years, e.g., from completed  
6 trust acquisitions, have become part of the relevant baseline.” *Id.* Here, the County is not  
7 arguing that the Regional Director should have considered past acquisitions in the tax  
8 analysis. The County is showing the impact of the present trust acquisition in the future.

9 Likewise, the cases cited by the Regional Director are not on point. Those cases  
10 discuss: (1) whether the BIA has to consider the cumulative tax impacts of a trust acquisition  
11 or speculate about future loss (*Benewah County, Idaho v. Northwest Reg’l Director*, 55 IBIA  
12 281, 296-97 (2012)); and (2) whether the county provided evidence of certain tax loss or its  
13 impacts on the county (*Desert Water Agency v. Acting Pacific Reg’l Director*, 59 IBIA 119,  
14 127 (2014)). This case does not fall within either holding. Here, there is no speculation about  
15 the future loss. It is clear from the record that the Tribe plans to build 143 homes on the land  
16 and a tribal facility structure. From that information, the County provided the BIA with  
17 information regarding the tax losses and the impacts to public services in the area. (County’s  
18 Opening Brief, Ex. A; AR0195.00325-00333; AR0244.00018-00023, 00026-00027.) Even  
19 the Tribe’s own opposition – that it will seek to get off-reservation fee based agreements, but  
20 has not secured those agreements yet – evinces the clarity of the tax loss and impact to  
21 services. (Tribe’s Response Brief at 12.) The Regional Director simply failed to analyze the  
22 actual tax removal and impact on services, which is error.

23 4. **The Regional Director and Tribe Do Not Establish that the Regional**  
24 **Director Appropriately Considered the Jurisdictional Problems and Land**  
**Use Conflicts Resulting from the Trust Acquisition.**

25 In the NOD, the Regional Director identified the current zoning for the property and  
26 cited the Tribe’s opinion that no “significant jurisdictional conflicts will occur as a result of  
27 transfer of the subject property into trust” to conclude that the intended uses were not  
28

1 inconsistent with the surrounding uses. (AR0123.00022.) In their responses, the Tribe and  
2 Regional Director again argue that the trust acquisition and proposed development are similar  
3 to surrounding development and that the Regional Director need only consider jurisdictional  
4 problems and potential land use conflicts, not resolve them. Thus, once again, the Tribe and  
5 Regional Director do not address the clear lack of a jurisdiction and land use analysis.

6 As an initial factual matter, arguing that the development is similar to surrounding  
7 development is inaccurate. Surrounding uses are rural. (AR00194.00095; AR0195.00037,  
8 AR0195.00347-00348; AR0244.00014-00018, 00029-00030, 00038-00039.) Thus, the  
9 premise on which the Regional Director based her conclusion is false.

10 Further, it does not show how the Regional Director properly analyzed the land use  
11 conflicts and jurisdictional problems in the NOD. A development of a 143 homes and event  
12 center in the area contravenes rural area policy countywide, is incompatible with the County's  
13 General Plan, Santa Ynez Community Plan, and County land use regulations, and would cause  
14 significant health, safety, and regulatory problems for the County, none of which were  
15 addressed in the NOD. (County's Opening Brief at 7-9.) *Thurston County*, 56 IBIA at 307-10.  
16 The Regional Director does not discuss these direct conflicts in the NOD. (AR0123.00022.)  
17 The Tribe's stated cooperation with local government and services in the past for other lands  
18 also does not adequately address conflicts as it is a proposed solution to problems that are not  
19 discussed in the NOD. (*Id.*)

20 As to the easement issue, whether the County has standing to challenge title  
21 examination issues is a red herring. The Tribe and BIA are required to provide information on  
22 which to assess the trust acquisition and analyze land use conflicts and must include  
23 information regarding the resolution of easement issues. *Cecelia Plain Feather v. Acting*  
24 *Billings Area Director*, 18 IBIA 26 (1989); *Naomi Haikey Eades v. Muskogee Area Director*,  
25 17 IBIA 198, 203 (1989); *Tohono O'Odham Nation v. Phoenix Reg'l Director*, 22 IBIA 220,  
26 235 (1992). As the Regional Director admits, however, its treatment of easement issues is  
27 imprecise. (Regional Director's Response Brief at 19.) That is accurate and inadequate. It is  
28

1 unclear from the record which rights-of-way and easements the Tribe is contending that it  
2 owns or does not own, and which acres the BIA would be taking into trust. (County's  
3 Opening Brief at 10-11.) Further, it is unclear exactly which easements the Regional Director  
4 is recognizing and the status of those rights. For example, the NOD and FONSI provide no  
5 provision for the County's road rights-of-way on the property and the County's enforcement  
6 of those rights, but imply that they will be addressed on a "case by case basis."  
7 (AR0194.01704; AR0123.) This is insufficient and requires remand.

8 **5. The Regional Director and Tribe Do Not Establish that the Regional**  
9 **Director Appropriately Considered the BIA's Ability to Discharge Any**  
10 **Additional Duties.**

11 As with the other factors, the Regional Director and Tribe do not point to any  
12 additional analysis by the Regional Director that rises to the level of adequate. As they both  
13 point out in their briefs, the Regional Director did not address duties other than forest or  
14 mineral resource management. (AR0123.00023.) The Tribe then argues that the counties  
15 have a duty to provide services to Indians on a reservation, without discussion. As the County  
16 has stated in multiple comments, however, the County does not have jurisdiction over certain  
17 services on Camp 4 if it goes into trust. (AR0195.00326-00328; AR0244.00019-00023.)  
18 Thus, the Regional Director must address how the BIA would discharge additional duties  
19 related to services on Camp 4, which the Regional Director failed and continues to fail to do.

20 The case cited by the Regional Director on this point is illustrative. In that case, the  
21 land was being used solely for agriculture. *State of Kansas v. Acting Southern Plains Reg'l*  
22 *Director*, 53 IBIA 32, 39-40 (2011). Therefore, the BIA's duties were to steward the land,  
23 which it found it was equipped to discharge. *Id.* That case noted however, that if the  
24 acquisition would result in significant additional duties, more discussion would be required.  
25 *Id.* Here there are significant, potential duties that require a more fulsome discussion.

26 The Tribe also argues that the County waived this issue by not raising it prior to the  
27 issuance of the NOD. The Regional Director did not make a finding on its ability to handle  
28 any additional duties until the NOD, did not request comments on it, and did not include any

1 information concerning it in the notice of application. (AR0051, AR00123.00023.) The  
2 County, however, raised the issue of services that it provides to the land at issue throughout  
3 the administrative process. (AR0195.00326-329; County’s Opening Brief, Ex. A at 2-3.)  
4 Further, in its appeal statement, the County addressed the ultimate improper finding on this  
5 issue, which was the first time it was provided an opportunity to give due consideration to the  
6 BIA’s analysis of its ability to discharge additional duties. (County’s Statement of Reasons  
7 for Appeal at 11.) *Dep’t of Transp. v. Pub. Citizen*, 541 U.S. 752, 764-65 (2004). Moreover,  
8 the County opposed the fee-to-trust acquisition throughout the administrative process and the  
9 BIA was well apprised of the issues with respect to it. Thus, the County timely raised issues  
10 with all criteria, including the BIA’s ability to discharge any additional duties.

11 **6. The Regional Director and Tribe Do Not Establish that the Regional**  
12 **Director Appropriately Considered the Economic Benefits Associated with**  
13 **Business Uses.**

14 The Tribe and Regional Director argue that the Tribe is not proposing any business  
15 uses as part of the trust acquisition. In doing so, they define “business uses” as business  
16 “enterprises” and ignore clear statements in the record. The record shows that the proposed  
17 development on Camp 4 includes the development of a Tribal Facility that will hold special  
18 events and house 40 employees. (AR0194.00029.) Whether those employees are for tribal  
19 government activities or not, there is a business use associated with the tribal facility.  
20 Therefore, that use requires the Tribe to submit a proposed business plan and the Regional  
21 Director to analyze the economic benefits of those uses. Contrary to the Tribe’s assertions  
22 otherwise, discussions of proposed uses in the Final EA did not include a proposed business  
23 plan or any economic benefits. Therefore, this factor was not adequately analyzed.

24 **7. The Regional Director and Tribe Do Not Establish that the Regional**  
25 **Director Appropriately Considered the Off-Reservation Locale.**

26 The Tribe and Regional Director simply point to the NOD to argue that the Regional  
27 Director adequately scrutinized the off-reservation criteria. There is no indication in the NOD  
28 that the Regional Director addressed this heightened scrutiny, however, or that the Regional

1 Director gave additional weight to the County's concerns in the noted areas.

2 (AR0123.00024.)

3 In summary, the record shows the Regional Director failed to adequately consider the  
4 regulatory factors governing the fee-to-trust acquisition and neither the Tribe nor the Regional  
5 Director establish otherwise. Therefore, the NOD should be vacated and remanded.

6 **B. THE REGIONAL DIRECTOR AND TRIBE FAIL TO SHOW HOW THE**  
7 **RECORD SUPPORTS A FINDING OF NO SIGNIFICANT IMPACT FOR THE**  
8 **CAMP 4 TRUST ACQUISITION; AN EIS IS REQUIRED.**

9 In asserting that the BIA complied with NEPA, the Tribe and Regional Director base  
10 their argument that an EIS is not required on fundamental misunderstandings of the NEPA  
11 process and the record here. First, they attempt to hold the County and other appellants to a  
12 higher standard than is required to trigger an EIS under NEPA. Second, they fail to address  
13 and refute the factors used to determine the significance of a project, which are demonstrated  
14 by the record in this case. Third, they attempt to narrow the scope of the proposed action to  
15 circumvent full environmental review of the acquisition, including its alternatives, and to  
16 ensure the decision whether to take the property into trust is a foregone conclusion. In  
17 addition to these errors, the Regional Director and Tribe still fail to establish the Final EA  
18 adequately addressed baseline conditions, cumulative impacts, and mitigation measures  
19 sufficient to support a FONSI irrespective of the need for an EIS.

20 1. The Regional Director and Tribe Apply the Wrong Standard for  
21 Determining When a Proposed Federal Action Requires the Preparation  
22 of an EIS, Which Camp 4 Does, and Inaccurately Characterize the  
23 County's Appeal as Mere "Disagreement" with the BIA's Conclusions.

24 At the core of Respondents' oppositions to the County's appeal are two  
25 mischaracterizations of the law and record of these proceedings. The first is that the  
26 appellants are required to establish a significant impact from the trust acquisition to trigger an  
27 EIS rather than the lower requirement of raising questions about whether the proposed action  
28 may have a significant impact. The second is that the County is merely disagreeing with the  
substantive conclusions of the NOD, FONSI, and Final EA. Both are inaccurate.

1 In a NEPA case such as this one: “To prevail on a claim that the agency violated its  
2 duty to prepare an EIS, a ‘plaintiff need not show that significant effects will in fact occur.’ It  
3 is enough for the plaintiff to raise substantial questions whether a project may have a  
4 significant effect on the environment.” *Sierra Club v. U.S. Fish & Wildlife Serv.*, 235  
5 F.Supp.2d 1109, 1130 (D. Or. 2002). “An agency’s decision not to prepare an EIS will be  
6 considered unreasonable if the agency fails to supply a convincing statement of reasons why  
7 potential effects are insignificant.” *Blue Mountains Biodiversity Project v. Blackwood*, 161  
8 F.3d 1208, 1211 (9th Cir. 1998) (internal quotation omitted). Thus, the Ninth Circuit has  
9 established a relatively low threshold for preparation of an EIS. *Nat’l Resources Defense*  
10 *Council v. Duvall*, 777 F.Supp. 1533, 1537 (E.D. Cal. 1991).

11 The cases cited by the Respondents in support of their burden arguments are IBIA  
12 cases not addressing the standard articulated in the Ninth Circuit on the facts of this case,  
13 which has the ultimate responsibility here for applying NEPA. (*See, e.g.*, Regional Director’s  
14 Response Brief at 27-28, 46 [citing IBIA cases]; Tribe’s Response Brief at 19 [citing IBIA  
15 case].) On the other hand, the federal cases cited by Respondents that discuss the burden of  
16 proof generally involve situations in which the BIA prepared an EIS, not a less detailed EA.  
17 *See, e.g., Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989) (addressing  
18 an EIS); *Columbia Basin Land Prot. Ass’n v. Schlesinger*, 643 F.2d 585, 592 (9th Cir. 1981)  
19 (addressing an EIS). The federal cases thus are not applicable to the standard required to  
20 trigger an EIS. As discussed in the County’s Opening Brief and below, under this standard,  
21 the BIA is required to prepare an EIS for Camp 4.

22 As to the nature of the County’s appeal arguments, Respondents’ suggestion that the  
23 County is repeating arguments made in the administrative proceedings and simply disagreeing  
24 with the conclusions of the BIA distorts the County’s appeal. The County had to raise any  
25 issues with the environmental review in the administrative proceedings in order to exhaust its  
26 administrative remedies. Pointing out that the County did so is irrelevant to the merits of  
27 those points. Further, the County’s disagreement is with the process of the BIA and its failure

1 to adequately address issues, provide sufficient information to the public, and have adequate  
2 support for its conclusions. In its Opening Brief and administratively, the County set forth the  
3 areas lacking sufficient analysis and information, as well as the areas where the Regional  
4 Director's conclusions were unsupported. Such "disagreement" shows the Regional Director  
5 acted in an arbitrary and capricious manner and in violation of the mandates of NEPA to  
6 ensure that the public is notified of environmental impacts before they occur.

7 **2. The Regional Director and Tribe Do Not Address the Significance Criteria**  
8 **that Determines Whether an EIS Should Be Prepared Under NEPA and**  
9 **Fail to Refute Comments Establishing the Significance of the Acquisition.**

10 As outlined in the County's Opening Brief, whether there may be a significant effect  
11 on the environment necessitating an EIS requires consideration of the context and intensity of  
12 the proposed federal action. *Sierra Club v. U.S. Fish & Wildlife Serv.*, 235 F.Supp.2d at 1129.

13 The Regional Director and Tribe did not address the context and intensity factors in arguing  
14 that an EIS is not required. (*Cf.* Regional Director's Response Brief at 47 [mentioning but not  
15 analyzing intensity and context factors].) Rather, they primarily argue that the analysis of  
16 various impacts was adequate, often citing cases involving an EIS, and summarily dismiss the  
17 appellants' discussion of the context and intensity of the proposed action. The administrative  
18 record, however, establishes the proposed trust acquisition is significant in the context of its  
19 setting and due to the degradation of several intensity factors. (County's Opening Brief at 11-  
20 15.) Specifically, the record establishes Camp 4: (1) impacts unique geographic  
21 considerations; (2) violates numerous local laws and regulations that protect and promote the  
22 public health, safety, and general welfare of the residents and businesses of the County; (3)  
23 threatens protected species and habitats; (4) impacts public services; (5) is controversial; and  
24 (6) would have adverse impacts. (*Id.*)

25 Moreover, in certain instances, Respondents inaccurately depict the administrative  
26 record. For instance, both argue that the Regional Director responded adequately to  
27 comments from the California Department of Transportation ("Caltrans"). Those comments,  
28 however, did not address the issues raised by Caltrans that the traffic impact study for the

1 project was flawed and, therefore, the “FONSI did not adequately fulfill the burdens of the  
2 National Environmental Protection Act. . . .” (AR0248.00001.) In addition, the Tribe argues  
3 the County miscalculated the potential increase in people attending events at the Tribal  
4 Facility when the BIA estimated the number of attendees to be up to 400 plus vendors for up  
5 to 100 events per year, essentially 2 events per week or 800 visitors. (AR0194.00019, 22-23,  
6 28-29, 141, 166, 1723.) In short, the Tribe and Regional Director’s responses do not refute  
7 the comments made in the record supporting an EIS in this case, and do not analyze the need  
8 for an EIS under the right significance criteria.

9 **3. The Regional Director and Tribe Attempt to Narrow the Scope of the**  
10 **Proposed Action to Avoid Studying Viable Alternatives and Fully**  
**Analyzing the Impacts of the Project.**

11 Throughout its response brief, the Tribe characterizes the proposed federal action as a  
12 “zoning change” or as the decision to take the land into trust, attempting to segment it from  
13 the proposed development on the land. After doing so, the Tribe then argues for a less  
14 thorough impacts analysis, including a less thorough alternatives analysis. For example, the  
15 Tribe argues with respect to agricultural impacts that the County confuses a “change in zoning  
16 designation (which has no environmental effect) with an actual change in land use (which  
17 may), and fails to identify any actual significant agricultural impact of taking the Tribe’s land  
18 into trust.” (Tribe’s Response Brief at 32.) Likewise, the Tribe argues that only two  
19 alternatives exist: either to take the land into trust or not take the land into trust. (*Id.* at 23.)  
20 The narrowing of the scope of the proposed action undermines the entire environmental  
21 review, especially the impacts and alternatives analysis, and requires remand.

22 Further, such an approach does not comport with the case law in this area. Courts and  
23 IBIA decisions addressing fee-to-trust acquisitions consistently analyze the proposed action as  
24 to the trust acquisition and proposed land use changes. *See, e.g., Voices for Rural Living v.*  
25 *Acting Pacific Reg’l Director*, 49 IBIA 222, 224-25 (2009) [analyzing proposed transfer and  
26 development and use of health clinic and residential units]; *Citizens for a Better Way v. U.S.*  
27 *Dep’t of Interior*, No. 2:12-CV-3021-TLN-AC, 2015 WL 5648925, at \*6-7 (E.D. Cal. Sept.

1 24, 2015) (analyzing off-site alternatives, different types of development, and different  
2 development intensities); *see also Thurston County*, 56 IBIA at 315 (finding environmental  
3 review inadequate where BIA relied on categorical exclusion when the acquisition included  
4 proposed change in land use). That is because the proposed action of taking land into trust  
5 can only be done for particular purposes that must be addressed as part of the action. Thus,  
6 the BIA must address the trust acquisition and any land use changes.

7 In addition, here the BIA set forth the purposes and need for the trust acquisition of  
8 Camp 4 in the project description of the Final EA, which included providing tribal housing,  
9 economic development, and tribal self-governance. (AR0194.00013-14.) Therefore, the  
10 housing development is part of the project description and the BIA was required to analyze the  
11 impacts of it. Likewise, the BIA was required to study, develop and describe appropriate  
12 alternatives to that project, which it failed to do. 42 U.S.C. § 4332(2)(E); 40 C.F.R. §  
13 1508.9(b); *see also* 43 C.F.R. § 46.310. The reasonable alternatives that the BIA did not study  
14 include less intense development, development on other locations, and an actual No-Action  
15 Alternative, which are viable alternatives to the proposed acquisition and land use changes.  
16 (County's Opening Brief at 19-20.) Contrary to the Tribe and Regional Director's arguments,  
17 such alternatives are reasonable as evidenced by numerous other fee-to-trust situations in  
18 which the BIA has studied them. *Citizens for a Better Way*, 2015 WL 5648925, at \*6-7  
19 (discussing off-site and lesser intensity alternatives that would have to be taken into trust).

20 4. **The Regional Director and Tribe Fail to Show that The Final EA/FONSI**  
21 **Adequately Addressed Mitigation Measures, Cumulative Impacts, the**  
22 **Baseline for the Project, and the Impacts of the Project.**

23 The County set forth the grounds establishing the inadequacy of the Final EA/FONSI's  
24 analysis of the impacts of the action, mitigation measures, cumulative impacts, and baseline in  
25 its Opening Brief. (County's Opening Brief at 15-22.) In response, the Tribe and Regional  
26 Director point to the Final EA and argue the appellants ignore the analysis in the Final EA or  
27 comments thereto, which is not true. With respect to the mitigation measures, the Tribe and  
28 Regional Director do not show how any of the mitigation measures actually reduce impacts to

1 a significant level or include enough detail to determine that they will be effective. The  
2 County, and others, provided comments showing the impact to various resources and the lack  
3 of any mitigation for those impacts. (County's Opening Brief at 15-16.) The Final EA's  
4 conclusory and unsupported analysis of best management practices, protective mitigation  
5 measures, and potential, future mitigations do not support a finding of insignificance. (*Id.*)

6 As to cumulative impacts, the Regional Director and Tribe do not show how the Final  
7 EA meets the standard of including quantified and detailed information. *Te-Moak Tribe of*  
8 *Western Shoshone of Nev. V. U.S. Dept. of Interior*, 608 F.3d 592, 603 (9th Cir. 2010). They  
9 cite to the same inadequate perfunctory general statements about possible effects in discussing  
10 cumulative impacts and do not show how the BIA accounted for the influx of people due to  
11 other tribal projects in the area in the analysis. (County's Opening Brief at 17-18.)

12 For the baseline, Respondents argue that the baseline must depict the current  
13 conditions before the agency action occurs. This argument misses the point that the current  
14 conditions for the proposed project cannot be known at this time. The Tribe is not proposing  
15 to develop the tribal housing until 2023. (County's Opening Brief at 20.) By seeking trust  
16 status at this time and analyzing the acquisition against the current environmental backdrop,  
17 the true impacts of the acquisition and project will not be known before a decision is made.  
18 Such an approach violates the fundamental tenets of NEPA. The Regional Director argue that  
19 it should not have to hold a fee-to-trust application for a decade. NEPA, however, requires  
20 that the federal government not take action until impacts can be meaningfully studied.  
21 Finally, the Tribe and Regional Director also do not address the numerous inadequacies in the  
22 Final EA raised by the County and other appellants. (County's Opening Brief at 20-21.)  
23 Ultimately, the Final EA analysis is inadequate regardless of the need for an EIS.

24 **III. THE REGIONAL DIRECTOR AND TRIBE FAIL TO ADDRESS THE**  
25 **CHANGED CIRCUMSTANCES REQUIRING SUPPLEMENTATION OF THE**  
26 **ENVIRONMENTAL REVIEW IN THIS CASE.**

27 Both the Regional Director and Tribe agree that NEPA imposes a continuing duty on  
28 federal agencies to supplement an environmental review where there are new circumstances or

1 information bearing on the proposed action or its impacts. The Regional Director, however,  
2 argues that the County has not shown how the alternative of taking a 350-acre parcel of  
3 property owned by the Tribe into trust instead of Camp 4 would serve the purpose and need of  
4 the project. The Tribe argues that the 350-acre property alternative is meritless as the County  
5 has not shown that it could be developed or has fewer impacts. Neither argument has merit.

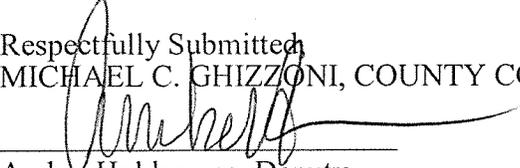
6 The Final EA itself states that the reason off-site locations were not considered is  
7 because the Tribe did not own another sufficient land base. (AR0194.00017.) Further, the  
8 Final EA states that the purpose of the trust acquisition is primarily for tribal housing.  
9 (AR0194.00013-14.) A 350-acre property could fulfill the goal of 143 tribal homes on one  
10 acre lots and could have a bearing on the impacts of the proposed action due to its decreased  
11 size and different location. (County's Opening Brief at 23-25.) The County is not required to  
12 show that a potential alternative is the superior alternative, only that new information bears on  
13 the proposed action and its impacts, which the acquisition of the 350-acre property clearly  
14 does. 40 C.F.R. § 1502.9(c)(1). Furthermore, the BIA studies off-site alternatives to  
15 proposed trust acquisitions even when those alternative sites may be required to be taken into  
16 trust. *Citizens for a Better Way*, 2015 WL 5648925, at \*6. The non-trust status of a property  
17 thus does not make it an unviable alternative. *Id.* As to worsened drought conditions,  
18 Respondents dismiss this information by citing the drought mitigation measures. The Tribe  
19 has agreed to comply with any County drought conditions by reducing turf watering, which is  
20 insufficient and supplementation is required on this basis as well. (AR0194.00196.)

21 **IV. CONCLUSION.**

22 Based on the County's Opening Brief and the foregoing reply, Appellant County of  
23 Santa Barbara respectfully requests that the Assistant Secretary vacate the NOD and FONSI  
24 and remand to the Regional Director for reconsideration under the governing law.

25 Dated: February 16, 2016

Respectfully Submitted  
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11 OFFICE OF HEARINGS AND APPEALS  
12 INTERIOR BOARD OF INDIAN APPEALS

13 COUNTY OF SANTA BARBARA, a  
14 Political Subdivision of the State of  
15 California,  
16 Appellant  
17 v.  
18 AMY DUTSCHKE, in her official capacity  
19 as Director, Pacific Region, Bureau of  
20 Indian Affairs,  
21 Appellee.

22 **Docket No:** \_\_\_\_\_  
23 [not yet assigned]  
24 **PROOF OF SERVICE**

25 I, Natalie M. Warwick, declare that I am over the age of eighteen and not a party to  
26 this cause. I am employed in, or a resident of the County of Santa Barbara, where the mailing  
27 occurs. My business address is 105 E. Anapamu Street, Suite 201, Santa Barbara, CA 93101.  
28 I further declare that on the 16th day of February, 2016, I delivered a true copy of the  
**COUNTY OF SANTA BARBARA'S REPLY BRIEF IN SUPPORT OF APPEAL** to  
each of the persons named below, either by depositing an appropriately-addressed copy in the  
United States mail, by email or both.

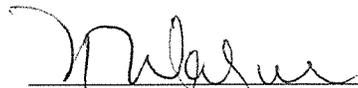
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I declare under penalty of perjury that the foregoing is true and correct.

Executed this 16th day of February, 2016.

  
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Natalie M. Warwick

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