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September 27, 2017

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**Re: Intergovernmental Memorandum of Agreement- Camp 4
Violation of *California Environmental Quality Act (CEQA)***

Dear Supervisors Hartmann, Williams, Adam, Wolf and Lavagnino:

I
INTRODUCTION

The tentative “Intergovernmental Memorandum of Agreement - Camp 4” between Santa Barbara County and the Santa Ynez Band of Chumsh Indians to approve the development of Camp 4 which includes 143 homes, tribal facilities, water treatment facilities, roads and infrastructure, among other things, is contrary to and inconsistent with the Santa Ynez Valley Community Plan and contrary to and inconsistent with the County’s position in the extensive litigation involving the taking of Camp 4 into trust, including the County’s position in a pending federal court action, i.e., the County has consistently maintained and alleged the federal action to take Camp 4 into trust and the proposed development of Camp 4 violated the *National Environmental Policy Act (NEPA)* as the proper environmental review was **not** performed.

As discussed below, Santa Barbara County has repeatedly asserted and alleged the proper environmental review of the proposed development of the approximately 1,433 acres of Camp 4 was **not** performed. It is evident Santa Barbara County’s agreeing to allow the development of Camp 4 as described above without a proper environmental impact statement is a violation of the *California Environmental Quality Act (CEQA)*.

As you know, CEQA is a self-executing statute. Public agencies are entrusted with compliance with CEQA and its provisions are enforced, as necessary, by the public through litigation. The residents of the Santa Ynez Valley request Santa Barbara County fulfill its obligations under CEQA and require the proper environmental review the County has repeatedly asserted must be performed to comply with the *National Environmental Policy Act (NEPA)*.

II **BACKGROUND**

My wife and I live in Santa Ynez, California, and we are neighbors of the Chumash Tribe with respect to Camp 4. We were Appellants in the matter before the U.S. Department of the Interior, Assistant Secretary-Indian Affairs, involving the Chumash Fee-to-Trust application. Santa Barbara County was also an Appellant challenging the FONSI and Notice of Decision issued by the BIA's Regional Director. As you know, there is litigation pending in Federal District Court filed by Santa Barbara County and others with regard to the federal action to take Camp 4 into trust. It is anticipated that additional lawsuits will be filed in federal court.

Set forth below is an itemization of the factual and legal allegations made by Santa Barbara County in the County's Notice of Appeal, Opening Brief, Reply Brief and Supplemental Reply Brief filed with the U.S. Department of the Interior, Assistant Secretary-Indian Affairs wherein the County asserted the decisions to take Camp 4 into trust violated the *National Environmental Policy Act* (NEPA) and were arbitrary, capricious, an abuse of discretion and/or otherwise not in accordance with law. It is assumed the County asserted those allegations with a good faith understanding and belief there was a reasonable factual and legal basis to make the allegations.

III **THE PROPER ENVIRONMENTAL REVIEW HAS NOT BEEN CONDUCTED**

Santa Barbara County is taking local action in violation of the *California Environmental Quality Act* (CEQA) as the County is apparently approving an agreement to allow the Tribe to engage in all of the activities the County and many others properly asserted violated the *National Environmental Policy Act* (NEPA). The County is approving a development without proper review of design plans, drawings and specifications that are required to evaluate the environmental impact of the development. As discussed below, Santa Barbara County has consistently and repeatedly been in agreement that the proper environmental review has **not** been conducted and development of Camp 4 will violate the *National Environmental Policy Act* (NEPA). As you know CEQA is the State's version of NEPA.

For your convenience, set forth below is an itemization of the County's factual and legal contentions in the County's Notice of Appeal, Opening Brief, Reply Brief and Supplemental Reply Brief filed with the U.S. Department of the Interior, Assistant Secretary-Indian Affairs. The County's allegations and assertions support a finding the local action by the County violates the *California Environmental Quality Act* (CEQA):

COUNTY'S NOTICE OF APPEAL (Dated January 21, 2015):

- I. THE NOD FAILS TO PROPERLY CONSIDER THE FACTORS REQUIRED BY 25 C.F.R. §§ 151.10 AND 151.11 AND IS AN IMPROPER EXERCISE OF DISCRETION.
 - A. Regional Director Erred by Not Appropriately Considering the Need for the Trust Acquisition.
 - B. Regional Director Erred by not Appropriately Considering the Purposes for the Land.
 - C. Regional Director Erred by not Appropriately Considering the Impact Land n County Tax Rolls.

- D. Regional Director Erred by not Appropriately Considering the Jurisdictional Problems and Land Use Conflicts Resulting from the Trust Acquisition.
- E. Regional Director Erred by not Appropriately Considering the BIA's Ability to Discharge Any Additional Duties.
- F. Regional Director Erred by not Appropriately Considering the Whether Compliance with NEPA Was Met.
- G. Regional Director Erred by not Appropriately Considering the Economic Benefits Associated with the Business Uses.
- H. Regional Director Erred by not Appropriately Considering the Off-Reservation Location of the Land.

II. THE NOD AND FONSI VIOLATE NEPA AND ITS IMPLEMENTING REGULATIONS.

- A. The BIA failed to Prepare an Environmental Impact Statement For Camp 4 in Violation of NEPA and Implementing Regulations.
- B. The Mitigation Measures Proposed in the FONSI/Final EA Are Inadequate and Do Not Reduce Impacts to an Insignificant Level; an EIS is Still Required under NEPA and Implementing Regulations.
- C. The FONSI/Final EA are Based on an Inappropriate Present-Day Baseline in Violation of NEPA and Implementing Regulations.
- D. The BIA Failed to Adequately Consider the Cumulative Impacts of the Proposed Action in Violation of NEPA and Implementing Regulations.
- E. The BIA Failed to Analyze Viable Alternatives in the FONSI/Final EA in Violation of NEPA and Implementing Regulations.
- F. The FONSI/Final EA are based on Assumptions, Factual Inaccuracies, and Unsupported Conclusions in Violation of NEPA and Implementing Regulations.

III. THE BIA FAILED TO PROVIDE SUFFICIENT INFORMATION FOR INFORMED PUBLIC COMMENT BY INTRODUCING NEW ANALYSIS IN THE FONSI IN VIOLATION OF NEPA AND IMPLEMENTING REGULATIONS.

COUNTY'S OPENING BRIEF (Dated December 31, 2015):

III. ARGUMENT

- A. THE COUNTY HAS STANDING TO CHALLENGE THE NOD AND FONSI.
- B. THE REGIONAL DIRECTOR ABUSED HER DISCRETION BY FAILING TO PROPERLY ANALYZED THE 25 C.F.R. §§ 151.10 AND 151.11 FACTORS.
 - 1. The Regional Director Did Not Adequately consider the Need for the Land.

2. The Regional Director Did Not Adequately Consider the Purposes of the Land.
 3. The Regional Director Did Not Adequately Consider the Tax Roll Impacts.
 4. The Regional Director Did Not Adequately Consider the Jurisdictional Problems and Land Use Conflicts Resulting from the Trust Acquisition.
 5. The Regional Director Did Not Adequately Consider the BIA's Ability to Discharge Any Additional Duties Owed by It.
 6. The Regional Director Did Not Adequately Consider NEPA Compliance.
 7. The Regional Director Did Not Adequately Consider the Economic Benefits.
 8. The Regional Director Did Not Adequately Consider the Off-Reservation Locale.
- C. THE REGIONAL DIRECTOR ABUSED HER DISCRETION BY NOT REQUIRING SUFFICIENT OWNERSHIP INFORMATION OR ADEQUATELY RECOGNIZING OTHER PROPERTY INTERESTS WITHIN CAMP 4.
- D. THE NOD AND FONSI VIOLATE NEPA AND ITS IMPLEMENTING REGULATIONS AS AN EIS IS REQUIRED FOR A SIGNIFICANT FEDERAL ACTION LIKE THE CAMP 4 TRUST ACQUISITION.
- E. EVEN IF AN EIS IS NOT REQUIRED, THE FINAL EA IS INADEQUATE TO SUPPORT A FONSI AND MUST BE VACATED AND REMANDED.
1. The Proposed Mitigation Measures Are Inadequate.
 2. The Final EA Does Not Adequately Consider the Cumulative Impacts of the Proposed Action.
 3. The Final EA Does Not Analyze All Viable Alternatives to Camp 4.
 4. The Final EA Is Based on an Inappropriate Baseline.
 5. The Final EA Contains Assumptions, Inaccuracies, and Omissions.
- F. THE BIA VIOLATED DUE PROCESS IN DECIDING THE APPLICATION.
- G. THE BIA MUST SUPPLEMENT ITS ENVIRONMENTAL REVIEW FOR CAMP 4 DUE TO SIGNIFICANT NEW CIRCUMSTANCES.
1. The 350 Acres Owned by the Tribe Is a Viable Alternative to the Proposed Camp 4 Trust Acquisition that Constitutes a Significant Change.
 2. The Drought Conditions Are a Significant Change that Affect Impacts to Water Usage in the Area.

COUNTY'S REPLY BRIEF (Dated February 16, 2016):

II. ARGUMENT.

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

1. The Regional Director and Tribe Do Not Establish the Need for the Trust Acquisition Was Adequately Addressed.
2. The Regional Director and Tribe Do Not Establish that the Regional Director Appropriately Considered the Purpose for the Land.
3. The Regional Director and Tribe Do Not Establish that the Regional Director Appropriately Considered the Impact on County Tax Rolls.
4. The Regional Director and Tribe Do Not Establish that the Regional Director Appropriately Considered the Jurisdictional Problems and Land Use Conflicts Resulting from the Trust Acquisition.
5. The Regional Director and Tribe Do Not Establish that the Regional Director Appropriately Considered the BIA's Ability to Discharge Any Additional Duties.
6. The Regional Director and Tribe Do Not Establish that the Regional Director Appropriately Considered the Economic Benefits Associated with Business Uses.
7. The Regional Director and Tribe Do Not Establish that the Regional Director Appropriately Considered the Off-Reservation Locale.

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

1. The Regional Director and Tribe Apply the Wrong Standard for Determining When a Proposed Federal Action Requires the Preparation of an EIS, Which Camp 4 Does, and Inaccurately Characterize the County's Appeal as Mere "Disagreement" with the BIA's Conclusions.
2. The Regional Director and Tribe Do Not Address the Significant Criteria that Determines Whether an EIS Should be Prepared Under NEPA and Fail to Refute Comments Establishing the Significance of the Acquisition.
3. The Regional Director and Tribe Attempt to Narrow the Scope of the Proposed Action to Avoid Studying Viable Alternatives and Fully Analyzing the Impacts of the Project.
4. The Regional Director and Tribe Fail to Show that The Final EA/FONSI Adequately Addressed Mitigation Measures, Cumulative Impacts, the Baseline for the Project, and the Impacts of the Project.

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

COUNTY'S SUPPLEMENTAL REPLY BRIEF (Dated March 11, 2016):

- II. ARGUMENT
- A. THE REVISED LAND USE MAP CONSTITUTES SIGNIFICANT NEW CIRCUMSTANCES OR INFORMATION REQUIRING THE BIA TO SUPPLEMENT ITS ENVIRONMENTAL REVIEW UNDER NEPA.
- B. THE REVISED LAND USE MAP HIGHLIGHTS THE INADEQUACIES OF THE FINAL EA FOR CAMP 4.
- C. THE REVISED LAND USE MAP SHOWS THE REGIONAL DIRECTOR FAILED TO ADEQUATELY ANALYZE ALL PROPOSED USES OF THE CAMP 4 AND THE RESULTING JURISDICTIONAL AND LAND USE CONFLICTS.
- D. THE REVISED LAND USE MAP SHOWS THE REGIONAL DIRECTOR FAILED TO ADEQUATELY ANALYZE THE ECONOMIC BENEFITS OF PROPOSED BUSINESS USES ON CAMP 4.

IV
CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

The *California Environmental Quality Act* (CEQA) is set forth in the *California Public Resources Code*, §21000, et seq.

The *California Public Resources Code*, §21001.1 states:

The Legislature further finds and declares that it is the policy of the state that projects to be carried out by public agencies be subject to the same level of review and consideration under this division as that of private projects required to be approved by public agencies.

The *California Public Resources Code*, §21002 states the following with respect to feasible alternatives or feasible mitigation measures:

The Legislature finds and declares that it is the policy of the state that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects, and that the procedures required by this division are intended to assist public agencies in systematically identifying both the significant effects of proposed projects and the feasible alternatives or feasible mitigation measures which will avoid or substantially lessen such significant effects. The Legislature further finds and declares that in the event specific economic, social, or other conditions make infeasible such project alternatives or such mitigation measures, individual projects may be approved in spite of one or more significant effects thereof.

The *California Public Resources Code*, §21002.1 states the following with respect to environmental impact reports:

In order to achieve the objectives set forth in Section 21002, the Legislature hereby finds and declares that the following policy shall apply to the use of environmental impact reports prepared pursuant to this division:

- (a) The purpose of an environmental impact report is to identify the significant effects on the environment of a project, to identify alternatives to the project, and to indicate the manner in which those significant effects can be mitigated or avoided.
- (b) Each public agency shall mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so.
- (c) If economic, social, or other conditions make it infeasible to mitigate one or more significant effects on the environment of a project, the project may nonetheless be carried out or approved at the discretion of a public agency if the project is otherwise permissible under applicable laws and regulations.
- (d) In applying the policies of subdivisions (b) and (c) to individual projects, the responsibility of the lead agency shall differ from that of a responsible agency. The lead agency shall be responsible for considering the effects, both individual and collective, of all activities involved in a project. A responsible agency shall be responsible for considering only the effects of those activities involved in a project which it is required by law to carry out or approve. This subdivision applies only to decisions by a public agency to carry out or approve a project and does not otherwise affect the scope of the comments that the public agency may wish to make pursuant to Section 21104 or 21153.
- (e) To provide more meaningful public disclosure, reduce the time and cost required to prepare an environmental impact report, and focus on potentially significant effects on the environment of a proposed project, lead agencies shall, in accordance with Section 21100, focus the discussion in the environmental impact report on those potential effects on the environment of a proposed project which the lead agency has determined are or may be significant. Lead agencies may limit discussion on other effects to a brief explanation as to why those effects are not potentially significant.

The *California Public Resources Code*, §21003.1 states the following with respect to the requirement that comments from the public be permitted:

The Legislature further finds and declares it is the policy of the state that:

- (a) Comments from the public and public agencies on the environmental effects of a project shall be made to lead agencies as soon as possible in the review of environmental documents, including, but not limited to, draft environmental impact reports and negative declarations, in order to allow the lead agencies to identify, at the earliest possible time in the environmental review process, potential significant effects of a project, alternatives, and mitigation measures which would substantially reduce the effects.

(b) Information relevant to the significant effects of a project, alternatives, and mitigation measures which substantially reduce the effects shall be made available as soon as possible by lead agencies, other public agencies, and interested persons and organizations.

(c) Nothing in subdivisions (a) or (b) reduces or otherwise limits public review or comment periods currently prescribed either by statute or in guidelines prepared and adopted pursuant to Section 21083 for environmental documents, including, but not limited to, draft environmental impact reports and negative declarations.

Before Santa Barbara County considers approving the development of Camp 4 in a manner the County has repeatedly asserted (in official filings) violates the *National Environmental Policy Act* (NEPA), Santa Barbara County **must** perform the proper environmental review (along with public comment) which has not been performed to date as repeatedly stated by the County, e.g., the County has asserted, among other things, the following in the County's Notice of Appeal (Dated January 21, 2015):

- A. The BIA failed to Prepare an Environmental Impact Statement For Camp 4 in Violation of NEPA and Implementing Regulations.
- B. The Mitigation Measures Proposed in the FONSI/Final EA Are Inadequate and Do Not Reduce Impacts to an Insignificant Level; an EIS is Still Required under NEPA and Implementing Regulations.
- C. The FONSI/Final EA are Based on an Inappropriate Present-Day Baseline in Violation of NEPA and Implementing Regulations.
- D. The BIA Failed to Adequately Consider the Cumulative Impacts of the Proposed Action in Violation of NEPA and Implementing Regulations.
- E. The BIA Failed to Analyze Viable Alternatives in the FONSI/Final EA in Violation of NEPA and Implementing Regulations.
- F. The FONSI/Final EA are based on Assumptions, Factual Inaccuracies, and Unsupported Conclusions in Violation of NEPA and Implementing Regulations.

V

THE COUNTY MUST PROTECT THE ENVIRONMENT

Santa Barbara County **must** take all action necessary to insure the residents of the Santa Ynez Valley are provided with clean air and water, enjoyment of aesthetic, natural, scenic, and historic environmental qualities, and freedom from excessive noise. The County must refrain from agreeing to and approving the development of Camp 4 in a manner that will unreasonably interfere with the above.

The residents of the Santa Ynez Valley are entitled to a proper environmental assessment, along with public comment, **before** the County enters into an agreement with the Tribe which agreement will have a drastic negative impact on the environment and rural character of the Santa Ynez Valley.

Moreover, there is something inherently wrong with Santa Barbara County's filing an appeal in the administrative proceedings and a federal court action wherein the County alleged the proper environmental review was not performed **and** then the County enters into an agreement with the Tribe that allows the development of Camp 4 in a manner the County previously asserted will drastically and negatively impact the environment. More confusing and disturbing is the County's agreeing to abandon its federal court lawsuit that was supposedly to protect the environment and residents of the Santa Ynez Valley.

Please advise me and the residents of the Santa Ynez Valley whether Santa Barbara County is going to properly assess the environmental issues involving Camp 4 which environmental assessment has been neglected to date as alleged by the County. If Santa Barbara County is not going to properly comply with CEQA and protect the environment, please let me and the community know that so all appropriate action can be considered to protect the community and environment.

Please post this letter on the County's website.

If you have any questions concerning this matter, please do not hesitate to contact me at BrianKramerLaw@aol.com or my office at 1230 Rosecrans Avenue, Suite 300, Manhattan Beach, California 90266, Tel. (310) 536-9501.

Very truly yours,
Brian Kramer
Brian Kramer

cc:

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