ASSISTANT SECRETARY – INDIAN AFFAIRS
UNITED STATES DEPARTMENT OF THE INTERIOR

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

Decision

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

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

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

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

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

Statutory and Regulatory Background

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

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

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

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

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

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

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

> (a) The existence of statutory authority for the acquisition and any limitations contained in such authority;
> (b) The need of the ... tribe for additional land;
> (c) The purposes for which the land will be used;
> (e) If the land to be acquired is in unrestricted fee status, the impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls;
> (f) Jurisdictional problems and potential conflicts of land use which may arise;
> (g) If the land to be acquired is in fee status, whether the [BIA] is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status; and
> (h) The extent to which the applicant has provided information that allows the Secretary to comply with 516 DM [Departmental Manual] 6, appendix 4, [the] National Environmental Policy Act (NEPA)[6] Revised Implementing Procedures, and 602 DM 2, Land Acquisitions: Hazardous Substances Determinations.[7]

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

Factual and Procedural Background

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

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[5] 25 C.F.R. § 152(f).
[6] *See generally* National Environmental Policy Act, 42 U.S.C. § 4332.
[7] *See generally* 25 C.F.R. § 151.10(a)-(c) and (e)-(h). (Section 151.10(d) is applicable only to acquisitions for individual Indians.)
[8] *See generally* 40 C.F.R. § 1501.4.
[9] AR0030
[10] AR0032
[11] ARO194.1908-15
[12] *Id.*

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

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

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

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

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[13] AR0080.00009

[14] AR0131.00001.

[15] *See id.*

[16] AR194.00001; AR0213.00001.

[17] AR0237.00001; AR0243.00001.

[18] AR0123.00001.

[19] AR0124-AR0125.

[20] AR0237.00022.

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

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

[23] January 30, 2015 Memo to IBIA.

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

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

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

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

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[24] February 9, 2015 memo to IBIA.
[25] *Id.*
[26] Order Setting Briefing Schedule (April 28, 2015).
[27] *See* Order Staying Briefing Schedule (June 24, 2015).
[28] *See* Order Dismissing Appeal (October 14, 2015).
[29] *See* Order to Resume Briefing and Setting Briefing Schedule (December 2, 2015).
[30] *See* Order Granting Request for Enlargement of Page Limits (January 21, 2016).
[31] *See* Request of Appellants, Brian Kramer and Suzanne Kramer, to Submit a Supplemental Reply Brief to Responses of Pacific Regional Director and Santa Ynez Band of Chumash Indians Due to Newly Discovered Information (March 7, 2016).
[32] *Id* at 2.
[33] *See* Santa Ynez Band of Chumash Mission Indians' Response to Motion of Appellants to File Supplemental Reply (March 10, 2016).
[34] *See* Reply of Appellants, Brian Kramer and Suzanne Kramer, to Response of Santa Ynez Band of Chumash Indians to Appellants' Supplemental Reply Brief (March 11, 2016).

March 11, 2016.[35]

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

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

Discussion

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

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

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

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

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

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

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

[39] *Id.*

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

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

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

Lastly, where "the appellant is an organization that claims to have standing to sue on behalf of its members, it must show that (1) its members would have standing to sue in their own right, (2) the interests it seeks to protect are germane to the organization's purpose, and (3) the issues to be resolved do not require the individual participation of the members."[45] Appellants have the burden to demonstrate that their interests, as identified through their members and sought to be protected in these appeals, are germane to them as organizations.[46]

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

A. Preservation of Los Olivos (POLO)

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

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[42] *Id.*

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

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

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

[46] *See id.* at 305.

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

[48] POLO Opening Brief at 2.

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

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

B. Santa Ynez Valley Concerned Citizens

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

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

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

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

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

[51] SYVCC Opening Br. at 2.

[52] *Id.*

[53] *See id.*

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

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

C. No More Slots (NMS)

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

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

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

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

[57] NMS Opening Brief at 1.

[58] Regional Director Response Brief at 4.

[59] NMS Reply Brief at 7.

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

D. Santa Ynez Valley Alliance (SYVA)

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

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

E. Messrs. Geyser and Corlett

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

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[61] SYVA Opening Brief at 1.

[62] SYVA Reply Brief at 5.

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

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

[65] Geyser and Corlett Opening Brief at 2.

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

II. Standard of Review

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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[74] *Pres. of Los Olivos & Pres. of Santa Ynez*, 58 IBIA 278, 306 (*citing Voices for Rural Living v. Acting Pac. Reg'l Dir.*, 49 IBIA at 240).
[75] *See* 25 C.F.R. § 151.3(a).
[76] 25 C.F.R. § 151.3(a)(1)-(3).
[77] *New York; Franklin Cnty.; & Fort Covington v. Acting E. Reg'l Dir., Bureau of Indian Affairs*, 58 IBIA 323, 336 n.18 (2014).
[78] *Shawano Cnty.*, 53 IBIA at 68-69; *Arizona State Land Dep't*, 43 IBIA at 160.
[79] *Shawano Cnty.*, 53 IBIA at 69. *See Cnty. of Sauk, Wis. v. Midwest Reg'l Dir.*, 45 IBIA 201, 206-07 (2007), *aff'd sub nom. Sauk Cnty. v. U.S. Dep't of the Interior*, No. 07-543, 2008 WL 2225680 (W.D. Wis. May 29, 2008).
[80] *Vill. of Hobart, Wis. v. Midwest Reg'l Dir.*, 57 IBIA 4, 13 (2013).
[81] *Shawano Cnty.*, 53 IBIA at 69.
[82] *Arizona State Land Dep't*, 43 IBIA at 160; *Cass Cnty., Minn. v. Midwest Reg'l Dir.*, 42 IBIA 243, 247 (2006).

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

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

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

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

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

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

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

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

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

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

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

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

[89] 25 C.F.R. § 151.10(a).

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

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

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

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

[91] *See* AR0123.00003.

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

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

[94] AR0001.00001

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

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

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

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

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

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

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

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

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

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

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

[101] 25 C.F.R. § 151.10(b).

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

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

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

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

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

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

[105] AR0123.00021.

[106] *See* AR0123.0020.

[107] AR0123.00021.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[117] *See id.* at 314.

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

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

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

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

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[118] *See Desert Water Agency*, 59 IBIA at 127.
[119] AR0123.00022.
[120] *See id.*
[121] *See id.*
[122] 56 IBIA 296 (2013).
[123] *See* County Opening Brief at 6; County Reply Brief at 3-4.
[124] *Thurston County v. Acting Great Plains Reg'l Dir.*, 56 IBIA 296, 307-10 (2013).
[125] *Id.* at 297.
[126] County Reply Brief at 4.
[127] 25 C.F.R. § 151.10(c).
[128] *See* POLO Opening Brief at 18-19; NMS Opening Brief at 11-12; SYVCC Opening Brief at 9-13.
[129] *Thurston County v. Acting Great Plains Reg'l Dir.*, 56 IBIA 62, 75 n.15 (2012)

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

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

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

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

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

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

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

[132] Tribe Response to Supplemental Replies at 3.

[133] *See id.* at 4.

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

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

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

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

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

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

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

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[138] AR0123.00022.

[139] *See id.*

[140] *See id.*

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

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

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

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

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

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

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

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

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

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

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

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

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

[149] AR0123.00022.

[150] *See id.*

[151] *Id.*

[152] *See* AR0123.00023.

[153] *See id.*

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

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

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

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

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

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

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

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

[158] *See id.*

[159] Id.

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

[161] *See* AR0123.00023.

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

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

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

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

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

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

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

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

[167] AR0194.01700.

[168] *See* AR0123.00023.

[169] *See* AR0123.00022.

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

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

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

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

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

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

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

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

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

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

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

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

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

[177] AR012.00023

[178] *See id.*

[179] *See id.*

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

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

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

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

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

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

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[180] *See* County Opening Brief at 9; Crawford-Hall Opening Brief at 24; Kramer Opening Brief at 25.
[181] *See* Regional Director Response Brief at 20.
[182] AR0237.00020-21; 448-59.
[183] Tribe Response Brief at 16 (citing *South Dakota v. U.S. Dep't of the Interior*, 775 F. Supp. 2d 1129, 1144 (D.S.D. 2011)).
[184] 25 C.F.R. § 151.11(b).
[185] *See id. See also City of Moses Lake v. Northwest Reg'l Dir.*, 60 IBIA 111, 118-19 (2015).
[186] *See* AR0123.00024.
[187] *See id.*

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

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

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

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

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

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

[189] *See* AR0123.00021.

[190] AR0123.00024.

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

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

[193] AR0123.00024.

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

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

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

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

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

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[195] *See Thurston County*, 56 IBIA at 304 n.11.
[196] *See id.*
[197] *Id.* at 304-05 n.11.
[198] *Id.*
[199] *U.S. Postal Serv. v. Gregory*, 534 U.S. 1, 10 (2001)
[200] *See Schweiker v. McClure*, 456 U.S. 188, 196 (1982).
[201] *See* Kramer Opening Brief at 6-9; Kramer Reply Brief at 2-5; POLO Opening Brief at 20-21.
[202] *See* Kramer Opening Brief at 6; Kramer Reply Brief at 4-5; Geyser and Corlett Opening Brief at 4 n.3; NMS Opening Brief at 23.
[203] *See* NMS Opening Brief at 22-24; NMS Reply Brief at 11-13.

other party."[204]

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

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

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

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[204] Regional Director Brief at Exhibit A.

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

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

[207] Regional Director Brief at 26.

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

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

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

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

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

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

VI. Compliance with NEPA

A. Standard of Review

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

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

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

[214] 40 C.F.R. §1501.1(d).

[215] 40 C.F.R. §1502(a)(4).

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

[217] *Id.*

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

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

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

[221] *See* 40 C.F.R. § 1508.9.

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

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

B. Whether Comments Were Addressed By the BIA

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

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

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

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

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

[226] AR0194.01689.

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

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

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

[230] *Id.*

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

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

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

C. Evaluation of Impacts in the EA and FONSI

1. Use of an Appropriate Baseline

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

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

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

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

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

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

[237] AR0237.00428.

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

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

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

2. Consideration of a Reasonable Range of Alternatives

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

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

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

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

[241] *See id.*

[242] *See id.*

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

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

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

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

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

3. Analysis of Resource Impacts

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

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[247] *See* County Opening Brief at 19.
[248] *See* SYVA Opening Brief at 16.
[249] 40 C.F.R. §1502.13.
[250] *Spiller v. White*, 352 F.3d 235, (5th Cir. 2003).
[251] AR0127.00016-29; AR0127.0030-32.
[252] AR0127.00157.
[253] AR0127.00181-82.
[254] *See* County Opening Brief at 16-17; Crawford-Hall Opening Brief at 12-15; Kramer Opening Brief at 16-20; SYCC Opening Brief at 11; SYVA Opening Brief at 7-9.
[255] *See Native Ecosystems Council v. Weldon*, 697 F.3d. 1043, 1051 (9th Cir. 2012).
[256] *See id. See also Northern Plains Resource Council, Inc., v. Surface Transp. Bd.*, 668 F.3d. 1067, 1076 (9th Cir. 2011).

a. Land Resources Impact Analysis

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

b. Water Resources Impact Analysis is Adequate

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

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[257] *See* County Opening Brief at 6; Crawford-Hall Opening Brief at 16; Kramer Opening Brief at. 4; POLO Opening Brief at 2; SYCC Opening Brief at 12; SYVA Opening Brief at 7.
[258] *Id.*
[259] *See* AR.0194.00194-95.
[260] *See* AR.0194.00732.
[261] *See* County Opening Brief at 13.
[262] *See id. See also* Crawford-Hall Opening Brief at 5; Kramer Opening Brief at 16; SYCC Opening Brief at 19; SYVA Opening Brief at 14.
[263] *See* County Opening Brief at 14; Kramer Opening Brief at 17; SYCC Opening Brief at 19.
[264] *See* AR0194.00198.
[265] *See* AR0194.00196.
[266] *See* AR0194.01689; AR0194.01745.

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

c. Air Quality Impact Analysis

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

d. Biological Resources Impact Analysis

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

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[267] *See* Crawford-Hall Brief at 2, 7-8; *See* Kramer Opening Brief at 25.
[268] *See* AR0194.01799.
[269] *See* AR0194.00027.
[270] *See* County Opening Brief at 13-14; Crawford-Hall Opening Brief at 2; Kramer Opening Brief at 13, 22.
[271] *See* County Opening Brief at 13-14; Kramer Opening Brief at 13, 22.
[272] *See* Crawford-Hall Opening Brief at 13; Kramer Opening Brief at 13; SYVA Opening Brief at 8, 11, 17.
[273] *See* AR0194.00075-78.
[274] *See* AR0237.00016.
[275] *See id.*
[276] *See* AR0194.00077.
[277] *See* AR0237.00017.

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

e. Traffic Impact Analysis

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

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

f. Land Use Impact Analysis

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

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[278] *See* County Opening Brief at 1, 8, 13; Crawford-Hall Opening Brief at 8; Kramer Opening Brief at 18; SYCC Opening Brief at 3, 12.
[279] *See* County Opening Brief at 14-15; Kramer Br. 18-19.
[280] *See* AR0194.01713-01897.
[281] See AR0194.00090-92.
[282] *See* County Br. Ex. A.
[283] *See* AR0194.00034; AR0194.00138; AR0194.00164; AR0194.00183.
[284] *See* County Opening Brief at 3, 7.

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

g. Noise Impact Analysis

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

h. Public Services Impact Analysis

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[285] *See* Kramer Opening Brief at 21, POLO Brief at 17; SYVA Opening Brief at 12.
[286] *See* Kramer Opening Brief at 22.
[287] *See* POLO Opening Brief at 16.
[288] See POLO Opening Brief at 17; SYVA Opening Brief at 4; SYVA Opening Brief at 16.
[289] *See* AR0194.00019.
[290] *See* AR0194.00020-21.
[291] *See* AR0194.00094-101.
[292] *See* Crawford-Hall Opening Brief at 5-6; Kramer Opening Brief at 11; SYCC Opening Brief at 3.
[293] *See* AR0194.00106-109; AR0194.00112.
[294] *See* AR0194.00109.
[295] *See* AR0194.00111-2.

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

i. Visual Resources Impact Analysis

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

j. Tribal Facility Impact Analysis

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

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

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

k. Cumulative Impacts Analysis and Growth Inducing Analysis

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

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

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[305] *See* AR0194.01867.
[306] *See* AR0194.00163.
[307] *See* County Opening Brief at 17; Kramer Opening Brief at 22; POLO Opening Brief at 19; SYCC Opening Brief at 13; SYVA Opening Brief at 9.
[308] *See* Kramer Opening Brief at 22.
[309] *See* SYCC Opening Brief at 13.
[310] *See* SYVA Opening Brief at 9.
[311] *See id.*
[312] *See* AR0194.00176.
[313] *See* AR0194.00176.

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

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

a. EA Analysis of Impacts

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

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

b. Whether an EIS Was Required

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

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

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

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

[317] *See* AR0194.00194.

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

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

i. Whether Mitigation Measures Are Adequately and Sufficiently Detailed

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

ii. Whether Supplementation Is Required

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

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[319] *Montana Wilderness Ass'n v. Fry,* 310 F.Supp.2d 1127, 1143 (D. Mt. 2004).
[320] *See* AR0194.00120-93.
[321] *See* AR0194.00194.
[322] *See* County Opening Brief 23-25;
[323] *See* 40 C.F.R. 1502.9(c)(1)(i-ii).

VII. Save the Valley's Amicus Brief

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

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

Conclusion

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

Dated: 1/19/17

Lawrence S. Roberts
Principal Deputy Assistant Secretary –
Indian Affairs

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