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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

ANNE CRAWFORD-HALL; SAN LUCAS RANCH, LLC; HOLY COW PERFORMANCE HORSES, LLC,

Plaintiffs,

v.

UNITED STATES OF AMERICA; U.S. DEPARTMENT OF THE INTERIOR; U.S. BUREAU OF INDIAN AFFAIRS, a division of the United States Department of the Interior; KEVIN HAUGRUD, in his official capacity as Acting Secretary of the Interior; MICHAEL BLACK, in his official capacity as Acting Assistant Secretary – Indian Affairs; LAWRENCE ROBERTS, in his official capacity as Principal Deputy Assistant Secretary; AMY DUTSCHKE, in her official capacity as Director, Pacific Region, Bureau of Indian Affairs; and DOES 1 through 100,

Defendants.

Case No.: 2:17-cv-1616

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs Anne Crawford-Hall; San Lucas Ranch, LLC; and Holy Cow Performance Horses, LLC ("Plaintiffs") bring this Complaint against Defendants Kevin Haugrud, in his official capacity as Acting Secretary of the Interior; Michael Black, in his official capacity as Acting Assistant Secretary – Indian Affairs; Lawrence Roberts, in his official capacity as Principal Deputy Assistant Secretary; Amy Dutschke, in her official capacity as Director, Pacific Region, Bureau of Indian Affairs; the Department of the Interior, an agency of the United States of America; the Bureau of Indian Affairs ("BIA"), a division of the United States Department of Interior; the United States of America, and DOES 1 through 100 (collectively, "Defendants").

NATURE OF ACTION

1. This action is brought to overturn an unlawful decision signed by a Deputy Principal Assistant Secretary of the Department of the Interior in the waning minutes of the Obama administration. Although the decision states that it is a final decision, the signor was not legally authorized to issue a final decision, rendering it void. The purpose of the decision was to affirm BIA's approval to remove forever over 1400 acres of pristine land from the regulatory structure of the County of Santa Barbara, California, and in the process to create a tax-immune, regulation-free Indian reservation for the benefit of an extremely small, but immensely wealthy group which had applied to BIA for a fee-to-trust transfer as an allegedly eligible Indian tribe.

2. The decision has an immediate and monumental impact on thousands of residents who spent years working on, and have relied on and must comply with, the County of Santa Barbara's and the Santa Ynez Valley's long-range planning documents, which the trust beneficiaries may now ignore completely. The decision, and the resulting transfer of the land into trust the next day, will forever change the character and governance of the area. It will impose a host of negative impacts on area residents while simultaneously taking away the ability of affected property

owners to petition their elected officials to provide meaningful mitigation through local land use and zoning laws. The assertion of sovereign authority over this land, with the corresponding right to undertake any and all commercial, industrial, and residential activity free from state and local laws, jeopardizes and puts at risk the area's environmental and socio-economic structures.

3. BIA's given mission is to promote Indian welfare. However, this mission does not and should not condone the promotion of sovereign authority over a massive acreage, based on inadequately-described and improperly-evaluated project plans, where the project is entirely inconsistent with local regulation, and where BIA has acknowledged it cannot monitor the project or ensure the project does not change.

4. Through this Complaint, Plaintiffs seek injunctive and declaratory relief to vacate the unlawful actions of Defendants to take into trust more than 1400 acres of land located in Santa Barbara County, California. Defendants' actions are arbitrary, capricious, an abuse of discretion and contrary to law and should be enjoined and declared unlawful under the Administrative Procedure Act ("APA"), 5 U.S.C. §§ 701, *et seq.* and Declaratory Judgment Act, 28 U.S.C. §§ 2201, *et seq.*

5. Plaintiffs challenge the Notice of Decision ("NOD") dated December 24, 2014, issued by Defendant Amy Dutschke, as Director, Pacific Region, Bureau of Indian Affairs ("Regional Director" or "Dutschke"). The NOD approved the "Application of the Santa Ynez Band of Chumash Mission Indians ("Applicant") to Have the Land commonly Known as 'Camp 4' Accepted by the United States in Trust." The NOD was based on an erroneous underlying Finding of No Significant Impact ("FONSI") and Final Environmental Assessment, Volumes I and II (May 2014) ("Final EA").

6. Plaintiffs also challenge the decision that purports to be issued by the Office of the Assistant Secretary – Indian Affairs, dated January 19, 2017, which was signed by Lawrence Roberts, then-Principal Deputy Assistant Secretary – Indian Affairs ("Principal Deputy"). The January 19, 2017 decision (the "Decision") states

that it is a final decision for the Department affirming the NOD and authorizing the Regional Director to accept the subject property ("Camp 4") into trust for the Applicant. As a result of the Decision, Defendants have accepted the conveyance of Camp 4 into trust on behalf of Applicant. Injunctive and declaratory relief should be granted because, as set forth below, the NOD (and the FONSI upon which it is based), the Decision, and the acceptance of Camp 4 into trust for Applicant are arbitrary, capricious, an abuse of discretion, and otherwise contrary to law. *See* 5 U.S.C. § 706(2)(A).

7. First, the Decision is contrary to law, void, and cannot be ratified, as it was issued by the then-Principal Deputy who lacked legal authority to issue a final decision on behalf of the Department resolving Plaintiffs' challenge and authorizing Defendants to place land in trust for the Applicant. Only the Assistant Secretary, not a Deputy Assistant, is authorized to issue a final decision. The Decision violates DOI's Regulations, 25 C.F.R. §§ 2.20(c), 2.6(c), and the Federal Vacancies Reform Act, 5 U.S.C. §§ 3346 *et seq*., which implements the Appointments Clause of the United States Constitution, U.S. Const. Art. II, § 2, cl. 2.

8. The day after the Decision was issued, on January 20, 2017, Defendant Dutschke executed an acceptance of the Grant Deed conveying Camp 4 to the United States of America. The Decision and the subsequent acceptance of the Grant Deed conveyance are unlawful and invalid and have no effect. [1] The Decision and acceptance of the Grant Deed thus should be vacated and declared unlawful and invalid because Mr. Roberts lacked legal authority to issue a final decision on behalf of the Department.[2]

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[1] The County of Santa Barbara (the "County") already has filed an action, titled *County of Santa Barbara v. Haugrud*, U.S. District Court, Central District of California, Case No. 2:17-cv-703 (the "County Action"), challenging the NOD and the Decision. In the County Action, the United States has reiterated its position that the Decision was issued by the Assistant Secretary.

[2] Following a third party's appeal of the Decision to the Interior Board of Indian Appeals ("IBIA"), the IBIA has issued an order directing briefing on the issue of

9. Second, Defendants further lack authority to take Camp 4 into trust for Applicant. The Indian Reorganization Act of 1934 ("IRA") authorizes the Secretary to take land in trust for "persons of Indian descent who are members of any recognized tribe now under Federal jurisdiction." 25 U.S.C. § 5129 (formerly 25 U.S.C. § 479). The Supreme Court has determined that the phrase "now under Federal jurisdiction" is limited to recognized tribes that were "under federal jurisdiction" in June 1934, when the IRA was enacted. *See Carcieri v. Salazar*, 555 U.S. 379 (2009). Applicant was not a federally recognized tribe and was not under federal jurisdiction in June 1934. Defendants' contrary determinations in the NOD and Decision are contrary to law and inconsistent with the facts. The NOD and Decision thus constitute an abuse of discretion, are arbitrary, capricious and contrary to law, and should be vacated.

10. Third, the NOD and Decision likewise should be vacated because Defendants failed to conduct the appropriate environmental review under the National Environmental Protection Act ("NEPA"), 42 U.S.C. § 4321 *et seq*. Compliance with NEPA is a prerequisite to the approval of an application for fee-to-trust transfer. Defendants failed to take the required "hard look" at the environmental and socio-economic impacts of the proposed fee-to-trust transfer that would authorize Applicant's permanent transformation of pristine agricultural land into a massive residential development. Defendants failed to prepare an Environmental Impact Statement ("EIS") as is required for all proposed major federal actions that may cause significant impacts on the environment. The Camp 4 acquisition, comprising the transformation of over 1400 acres of land previously dedicated to low-density

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finality. Plaintiffs believe that the Decision is final because: the Decision states that it is final; the BIA has acted upon the Decision by taking land into trust; the County has filed suit on the grounds that the Decision is final and the United States has asserted that the Decision was issued by the Assistant Secretary; and the Decision did not alert the parties that it was subject to further appeal. Plaintiffs therefore seek relief from this Court.

agricultural uses, is inconsistent with local land use regulations, will cause significant impacts on the environment, and constitutes a major federal action. In violation of NEPA, Defendants prepared an inadequate and flawed Final EA, on which the FONSI was based. The resulting NOD and Decision are arbitrary, capricious and contrary to law because they violate NEPA, and thus should be vacated.

11. Fourth, the NOD and Decision should be set aside because the Regional Director failed properly to follow the regulatory guidelines governing fee to trust acquisitions (25 C.F.R. §§ 151.10 and 151.11), and failed to give greater scrutiny to Applicant's justification of anticipated benefits as required for off-reservation property transfers. The NOD and Decision are therefore arbitrary, capricious and contrary to law, and should be vacated.

12. Fifth, the acceptance of Camp 4 into trust for Applicant should be declared invalid as arbitrary, capricious, an abuse of discretion, and otherwise contrary to law. Because the NOD and Decision were unlawful and invalid, the action by the BIA to accept Camp 4 into trust was arbitrary, capricious, an abuse of discretion, and otherwise contrary to law and should be declared invalid.

13. As discussed below, Plaintiffs seek declaratory and injunctive relief, including, but not limited to, vacatur of the Decision and the NOD, and an order declaring the Regional Director's acceptance of the Grant Deed conveying Camp 4 to the United States invalid and requiring Defendants to undo the unlawful conveyance of Camp 4 into trust.

PARTIES

14. Plaintiffs are Anne Crawford-Hall, San Lucas Ranch, LLC, a California limited liability corporation, and Plaintiff Holy Cow Performance Horses, LLC, a California limited liability corporation.[3] Ms. Crawford-Hall is the manager and

[3] Plaintiffs San Lucas Ranch, LLC and Holy Cow Performance Horses, LLC are collectively referred to herein as the "LLC Plaintiffs."

authorized representative of the LLC Plaintiffs, which together own and operate the agricultural land and facilities commonly known as the San Lucas Ranch. Ms. Crawford-Hall's family previously owned Camp 4, and her ties to Camp 4 run back over sixty years. Ms. Crawford-Hall continues to regularly work, manage and enjoy the San Lucas Ranch, which is Camp 4's immediate neighbor. Specifically, the San Lucas Ranch is located directly south and southwest of Camp 4, with the two separated by only a narrow rural road.

15. Defendant Kevin Haugrud is the Acting Secretary of the DOI and is named herein in his official capacity, as successor to the prior Secretary, Sally Jewell.[4] In his capacity as Acting Secretary, Defendant Haugrud exercises ultimate authority, supervision and control over Defendants Michael Black and Amy Dutschke and their subordinates within the United States Bureau of Indian Affairs ("BIA"), a bureau within the DOI.

16. Defendant Michael Black is the Acting Assistant Secretary – Indian Affairs ("Assistant Secretary"), and is named herein in his official capacity, and as successor to previous Acting Assistant Secretary Lawrence Roberts. The position of Assistant Secretary was held by Kevin Washburn until Mr. Washburn resigned at the end of December 2015. Following Mr. Washburn's resignation, the position of Acting Assistant Secretary was held by Lawrence Roberts, who had been Principal Deputy when Mr. Washburn resigned. Upon Mr. Washburn's resignation, Mr. Roberts became the Acting Assistant Secretary. Mr. Roberts continued in the role of Acting Assistant Secretary until July 28, 2016, on which date his service as the Acting Assistant Secretary ended. Thereafter, Mr. Roberts reverted back to his role as Principal Deputy. Upon information and belief, Mr. Roberts continued in the position

[4] Title 5, Section 702 of the United States Code provides that "the United States may be named as a defendant in any such action, and a judgment or decree may be entered against the United States: Provided, That any mandatory or injunctive decree shall specify the Federal officer or officers (by name or by title), and their successors in office, personally responsible for compliance." 5 U.S.C. § 702.

of Principal Deputy until he left DOI, apparently on January 19 or 20, 2017, after he issued the Decision.

17. Defendant Amy Dutschke is the Director of BIA's Pacific Regional Office, and is named herein in her official capacity. Defendant Dutschke exercises direct supervisory authority and control over the BIA's Pacific Region, which covers the State of California, and oversees the operations of the Regional Office and its four BIA Agencies. Defendant Dutschke signed the NOD, and, on January 20, 2017, she executed an acceptance in trust of the Grant Deed from Applicant to the United States.

18. Defendants Haugrud, Black, and Dutschke are responsible officers or employees of the United States and have direct and/or delegated statutory duties in carrying out the provisions of the IRA, codified at 25 U.S.C. § 5101 *et seq*. and the Code of Federal Regulations ("C.F.R."), Title 25, Part 151, in taking land into trust for Native American Tribes.

19. Defendant BIA is division of the DOI, and is an agency of the United States of America acting as trustee of the welfare of federally recognized tribes of Native Americans. In that role, BIA has confirmed its intent to take Camp 4 into trust for Applicant, and its Regional Director has executed an acceptance of the Grant Deed of conveyance taking Camp 4 into trust.

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

21. Plaintiffs lack knowledge of the true names and capacities of Defendants sued herein as DOES 1 through 100, inclusive, and therefore sue these Defendants by these fictitious names. Plaintiffs will amend or seek leave to amend this Complaint when those names and capacities are ascertained. One of the DOES shall be the successor to the Principal Deputy, when he or she is named to that presently vacant

position, in his or her official capacity.

JURISDICTION AND VENUE

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

23. An actual controversy currently exists between the parties.

24. Judicial review of the NOD, the Decision and the Defendants' acceptance of Camp 4 into trust is authorized by the APA. *See* 5 U.S.C. §§ 701-706. Defendants have stated that the Decision, which affirms the NOD, is a final decision of DOI and authorizes Defendants to accept Camp 4 into trust. On January 20, 2017, Defendants acted upon the NOD and Decision and accepted conveyance documents taking Camp 4 into trust. The United States has waived its sovereign immunity to suit under 5 U.S.C. § 702.

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

BACKGROUND

The Camp 4 Property In Santa Barbara County

26. Camp 4 is located in the Santa Ynez Valley, in Santa Barbara County, California. Camp 4 is comprised of five contiguous parcels of land, and includes over 1,400 acres.[5]

[5] The five parcels are: (a) Parcel 1 – APNs 141-121-051 and 141-140-010; (b) Parcel 2 – APN 141-140-010; (c) Parcel 3 – APNs 141-230-023 and 141-140-010; (d) Parcel 4 – APNs 141-240-002 and 141-140-010; and (d) Parcel 5 – APN 141-230-023.

27. Plaintiff Crawford-Hall's grandmother originally purchased the San Lucas Ranch in 1924, which then included the property known as Camp 4. Ms. Crawford-Hall grew up on the San Lucas Ranch. Her family used the land to sustainably raise cattle, horses, and crops, a tradition she continues to follow on her lands across the narrow rural road from Camp 4.

28. In approximately 1971, Ms. Crawford-Hall's family enrolled San Lucas Ranch, including the Camp 4 property, under California's Williamson Act, and preserved the land for agricultural use under a Williamson Act contract. The Williamson Act provides tax incentives to preserve land in agricultural production or open space, under 10-year contracts which are annually renewed. Camp 4 is still pristine land that is home to self-sustaining oak woodland, and today includes some vineyards, which were placed on the land after it left Ms. Crawford-Hall's family.

29. After approximately nine long years of community involvement, on October 6, 2009, the County adopted the Santa Ynez Valley Community Plan (the "SYVCP").[6] Plaintiffs are informed and believe that the Applicant was asked to participate in the community meetings, but refused to attend. The SYVCP addressed the community concerns, including but not limited to ensuring and preserving the viability of agriculture, and the problems of the lack of adequate water for new development that became more critical with the development of new vineyards, increasing traffic, insufficient infrastructure to accommodate new growth and the impact of tourism. The SYVCP's purpose was to manage existing conditions, facilitate proper planning and accurately reflect the prevailing visions and objectives of the area's residents. The SYVCP "provides the general public, landowners and decision makers with a framework for planning future development in the region." SYVCP at 2-3.

[6] The SYVCP is available online at: http://longrange.sbcountyplanning.org/planareas/santaynez/syv_cp.php (last accessed 2/23/2017).

30. The County General Plan and the SYVCP both confirm the County's commitment to protecting agriculture. Camp 4's historical use was agricultural grazing land. Under local law, Camp 4 is zoned exclusively for low density agricultural use, with a 100-acre minimum size lot. The maximum theoretical subdivision potential for the property, if removed from its Williamson Act contract, would be 14 lots with 14 main residences, and this plan could only be realized if full environmental review indicated such development was appropriate.

31. Camp 4 is surrounded by other low density property uses – i.e., agricultural ranching and farming – and is accessible only by narrow rural roads.

The IRA Applies to Recognized Tribes Under Federal Jurisdiction As Of June, 1934. However, Applicant Was Not An Organized Tribe At that Time, and Did Not Organize Under the IRA Until Thirty Years Later

32. Applicant's history is grounded in California's Spanish and mission legacy. Pursuant to the Mission Indian Relief Act of 1891 (26 Stat. 71-714, c. 65), a commission was established (the "Smiley Commission") to investigate and report on the conditions of the Mission Indians in California, *i.e.*, the various mixed groups of Indians who were residing near the California missions. The Smiley Commission reported that, as of 1891, a village of Indians, then comprised of approximately fifteen families, had relocated from unknown areas to reside in Santa Ynez, in Santa Barbara County, around the Zanja de Cota Creek. The report stated that the families were living on land owned by non-Indians, but did not identify the tribal associations of any of the village residents.

33. The IRA was enacted in June 1934. In December 1934, the Secretary of the Department of the Interior held an election in which twenty of the forty-eight eligible adult Native Americans living in Santa Ynez voted to accept the IRA.

34. Plaintiffs are informed and believe that, at the time the IRA was enacted, and through 1940, the land on which the Santa Ynez Indians resided was not a federal

reservation. The opinion of the Solicitor, dated October 14, 1940 (M.29739), explains that the Santa Ynez Reservation did not exist as of that date, but was merely a proposed reservation. According to Applicant, "[i]t was not until December 18, 1941 that the area . . . was officially acquired by the U.S. Government to be held in trust for use as the Santa Ynez Reservation."

35. Approximately thirty years after the IRA election in Santa Ynez in December 1934, Applicant organized itself as a political entity under the IRA. Its Articles of Organization were approved by the DOI in February 1964, with Applicant's designated title being the "Santa Ynez Band of Mission Indians."

36. Between 2000, when Indian gaming was approved in California, and the present, Applicant has continued to build its economic base and to prosper. Plaintiff is informed and believes that, promptly after obtaining approval in 2000, Applicant developed a 2,000-gaming device operation. This was followed by a full permanent casino approximately one and one-half years later, and its casino hotel opened in 2004. Applicant also acquired other land, other hotel properties and two gas stations in Santa Ynez.

37. Applicant's website states that it is now the major employer in the Santa Ynez Valley. Applicant is comprised of only approximately 136 members. As a result of the Applicant's economic prosperity, many of its members have multiple residences, both inside and outside of California.

38. In 2005, Applicant, still titled the Santa Ynez Band of Mission Indians, submitted an application for a fee-to-trust acquisition of land in Santa Barbara that Applicant owned in fee. In this 2005 request, Applicant acknowledged that the area it deems its reservation was not officially acquired by the United States until December 18, 1941. BIA has approved this fee-to-trust application.

39. In 2010, Applicant purchased Camp 4, taking title in fee, under the name of the "Santa Ynez Band of Mission Indians." The title "Chumash" was not part of its formal title.

40. Camp 4, comprising over 1400 acres, is the size of one of the few small towns in the Santa Ynez Valley. Applicant took possession of Camp 4 while Camp 4 was enrolled under the Williamson Act, and did not seek to change that tax-advantaged status until it filed its application for Camp 4 to be approved for fee-to-trust acquisition, as described below.

Applicant Requests a Tribal Consolidation Area in 2013 Alleging an Historical Connection to 11,500 Acres Without Providing Supporting Evidence

41. On March 27, 2013, Applicant submitted a Proposed Tribal Consolidation and Acquisition Plan ("TCA") to the BIA for approval. Notwithstanding Applicant's small membership, the TCA sought approval for an acquisition plan covering *11,500* acres of land in Santa Barbara County. This area represents approximately one fourth of the Santa Ynez Valley.

42. The primary basis for the TCA application was Applicant's assertion that it had a Chumash tribal historical connection to these lands. The purpose of the TCA was "to assist the Tribe in acquiring additional lands." The vast majority of the land that Applicant sought to sweep into the TCA designation was owned by non-Indian owners and was never part of any reservation. The TCA application was not supported by factual evidence or legal justification of Applicant's alleged historical connection and failed to include any environmental analysis whatsoever on the impact of this massive requested action.

43. Within three months, on June 17, 2013, Defendant Dutschke had approved the TCA in a cursory, one-paragraph order, which was bereft of any analysis.

Applicant's Original Fee-to-Trust Application for Camp 4

44. In June 2013, as supplemented in July 2013, Applicant submitted an application under 25 C.F.R. Part 151 requesting that the BIA accept Camp 4 into trust on its behalf. The initial fee-to-trust application was based largely on the approved

TCA, and asserted that Camp 4 was within the approved TCA area.

45. In August 2013, BIA published an Environmental Assessment for the initial fee-to-trust application. The Environmental Assessment was likewise based on the then-approved TCA order, and asserted that the application could be reviewed with lesser scrutiny than that required for off-reservation acquisitions. The Environmental Assessment identified two development alternatives ("Proposed Actions") for Camp 4, and a no action alternative. Under Alternative A, as ultimately revised (described below), the 1433 acres making up Camp 4 would be converted into 143 five-acre residential lots, covering 793 acres. Camp 4 would also include 206 acres of vineyards, 300 acres of open space/recreational, 98 acres of riparian corridor, 33 acres of oak woodland, and 3 acres of Special Purpose Zone for utilities.

46. Under Alternative B, as ultimately revised (described below), Camp 4 would be converted to 143 one-acre residential lots for Applicant members, 869 acres of open space/recreational use, 30 acres of tribal facilities, and the same acreages of vineyard, riparian corridor, oak woodland, and utilities as Alternative A. The proposed tribal facilities would include a meeting hall, kitchen, break room, private offices, conference room, general office, training room and circulation area. The facility would host 100 special events per year of up to 400 attendees.

47. Plaintiff Crawford-Hall timely appealed the TCA approval order to the Interior Board of Indian Appeals ("IBIA"). On October 11, 2013, Applicant withdrew its TCA application and requested BIA to dismiss the appeals to the TCA order. On October 31, 2013, the IBIA dismissed the TCA appeals as moot and vacated Defendant Dutschke's June 17, 2013 approval of the TCA.

48. Following the dismissal of the IBIA appeals of the TCA order, Applicant submitted a revised application for fee-to-trust acquisition of Camp 4 (the "Application"), in November 2013. BIA then published a revised, final Environmental Assessment ("Final EA"), in May 2014. The Application and Final EA attempted to remove all references to the TCA order. Under local regulation,

Alternative B constituted the urbanization of rural land. It proposed densely clustered residences of unknown dimensions, and unspecified numbers of ancillary buildings, for an unknown (but at least 415) number of new residents, located on scenic Armour Ranch Road, directly across the street from Plaintiffs' grazing and crop lands.

49. Plaintiffs submitted timely comments in response to the Application and BIA's environmental assessments.

50. Following the issuance of the Final EA, Applicant announced a massive expansion of its casino resort, approximately two miles down the road from Camp 4. The proposed project was to add approximately 45,000 square feet to the casino floor, then approximately 94,000 square feet; to add a five-story parking garage, with 584 parking spaces; and additional food and beverage services. Most problematic, it was designed to add another 215 rooms, in *a twelve-story tower*, to triple the size of the hotel. The hotel tower, and its improper placement in conjunction with the Santa Ynez airport, was the subject of community protest and concerned letters from governmental entities. Notwithstanding the community uproar and government concerns, the Applicant proceeded to build out its approximately $100 million-plus casino resort. The monstrous hotel tower now stands in the middle of what was a natural valley made up of ranches, cattle and horse operations, and a few small, quaint towns.

BIA Issues A Finding of No Significant Impact

51. On October 17, 2014, Defendant Dutschke issued a Finding of No Significant Impact ("FONSI") based on the Final EA for the transfer of Camp 4 into trust. A true copy of the FONSI (without its exhibits) is attached hereto as **Exhibit A**.

52. The FONSI asserted that the fee-to-trust transfer of Camp 4 did not constitute a major federal action that would significantly affect the quality of the human environment, and that an EIS was not required.

53. Contrary to the FONSI, the Proposed Action is a major federal action that would significantly affect the quality of the human environment. Applicant proposed

to take over 1400 acres, i.e., the area of a small-sized town, and to construct 143 one-acre residential units (for an uncertain number of residents), access roads, meeting facilities (with a 250-car parking lot), on-site wastewater treatment facilities, and drill an additional two new wells, drawing from a groundwater basin which was already in a state of overdraft in 2009. The meeting facility, alone, is anticipated to host *100 events per year*, each of which will draw 400 visitors plus vendors, with corresponding increases in water usage, traffic, noise, and waste.

54. The development will destroy protected mature oak trees and build on wetland areas that are critical to wildlife habitat. The Proposed Action would (i) drain scarce groundwater resources in a time of historical drought, (ii) harm neighboring livestock and crop operations, and (iii) place increased (and unpaid-for) demands on the infrastructure and on the community's fire, police, and medical first responders. In order to reach its finding that the impacts were insignificant, the BIA's FONSI relied on over 100 separate mitigation measures.

55. The Proposed Action was highly controversial in that knowledgeable individuals and agencies were critical of the Final EA and disputed its conclusions.

56. BIA's FONSI was defective and inadequate in numerous critical areas. The deficiencies included, but are not limited to, the following:

a. BIA improperly applied a present day baseline, when Applicant had stated it would comply with the Williamson Act contract, under which the land could not be developed until 2022;

b. BIA used incorrect data to conclude that the proposed action would not affect groundwater resources;

c. BIA relied on proposed mitigation measures, without supporting evidence that those measures were either feasible or enforceable;

d. BIA failed to analyze the impact of Applicant's intended assertion of federal water rights;

e. BIA's analysis was improperly speculative as a result of the lack of

specific information as to the size of the homes and number of ancillary buildings, and the number of residents (although approximately at least 415), given Applicant's stated desire to use Camp 4 to provide housing for 1300 lineal descendents (including, presumably, non-Applicant members);

f. BIA improperly assessed the harm to water resources, agriculture, wildlife habitat, air quality, public resources and services, and public safety;

g. BIA failed adequately to evaluate the impact of dense permanent residential development, and facilities hosting over 100 events per year, with over 400 visitors plus vendors, on the surrounding environment;

h. BIA improperly evaluated the impacts on the surrounding environment of the increased noise, traffic, lights, pollution, lack of buffers on neighboring grazing and crop operations, and increased trespass and vandalism, both during and after construction.

i. BIA failed to address the incompatibility of the Proposed Action to the County's General Plan, the Santa Ynez Valley Community Plan, and relevant zoning and land use regulations;

j. BIA failed to specify the mitigation measures it relied on as to adequacy, measurable performance standards, or expected results, and entirely ignored that it would not be capable of monitoring the mitigation or best practice measures it relied on;

k. BIA failed to fully analyze all of the cumulative impacts, including the casino hotel expansion's anticipated increased drain on resources and infrastructure;

l. BIA failed to evaluate and describe viable reasonable alternatives

including but not limited to postponement or a smaller land transfer;

m. BIA did not provide an opportunity for public comment before including new information in the FONSI not present in the Final EA.

The Notice of Decision ("NOD") Approved Taking Camp 4 Into Trust

57. On December 24, 2014, Defendant Dutschke, as Regional Director, issued the NOD, and approved Applicant's Application to take Camp 4 into trust. A true copy of the NOD is attached hereto as **Exhibit B**.

58. BIA's analysis improperly concluded that the acquisition "falls within the land acquisition policy as set forth by the Secretary of the Interior." NOD at 3. To conclude Applicant was eligible for a fee-to-trust acquisition, the BIA relied on two alleged facts.

59. First, the NOD stated that the Santa Ynez Reservation was originally established pursuant to Departmental Order under the Authority of the Act of January 12, 1891 (26 Stat. 712). However, this is mistaken. There was no evidence of record of the cited Departmental Order before the BIA when it reached this conclusion, and the Act of January 12, 1891, *i.e.*, the Mission Indian Relief Act of 1891, did not set aside any reservation for the Mission Indians of Santa Ynez. Applicant itself had admitted that the land which is referred to as its reservation was not formally accepted by the United States until 1941.

60. The second alleged fact on which the Regional Director relied was that the Secretary held an election for the Mission Indians living in Santa Ynez on December 15, 1934, under the Indian Reorganization Act of June 18, 1934. Defendant Dutschke concluded that the act of calling and holding the election, standing alone, demonstrated that Applicant was deemed to be under federal jurisdiction in 1934. The act of calling an election *after* the IRA was enacted cannot

establish that Applicant was a federally recognized tribe as of the time the IRA was enacted in June 1934. As of June 1934, among other key factors: Applicant did not have any acknowledged or recognized political status as a group; Applicant was not organized as a political group (this did not occur until 1964); Applicant did not exercise jurisdiction over the lands on which the Santa Ynez Mission Indians resided; Applicant did not have a government-to-government relationship with the United States; Applicant did not have a treaty with the United States; Applicant did not have any federal reservation land set aside by statute; and a 1906 deed covering some of the alleged reservation land, which did not show it was formally accepted by the United States, contained a provision for reversion of the land at such time as no descendents of the original Mission Indian families resided on the land.

61. The NOD also concluded that no further NEPA review was necessary, and deferred to the Applicant's comments on the Applicant's Final EA, stating: "Whether an EIS is necessary, or any other specific environmental issues which have already been thoroughly addressed in the Tribe's Final EA and the responses to comments therein (Final EA Appendix O). Thus, the Final EA and its appendices are incorporated by reference herein as though fully set forth." (Exhibit B at 18.) This conclusion was based on improper environmental review, improperly deferred to Applicant, and did not adequately address compliance with NEPA. The NOD relied on the FONSI and Final EA, which were inadequate for the Proposed Action under NEPA.

62. The NOD also asserted that the regulatory factors required under 25 C.F.R. §§ 151.10 and 151.11 were satisfied. This assertion too was legally flawed, as regulatory requirements were not satisfied, including but not limited to the following: (a) BIA improperly scrutinized the Applicant's "need" or "purpose" for the transfer; (b) BIA did not properly consider the tax impacts or the jurisdictional and land use conflicts; (c) BIA improperly determined that Applicant did not have to provide a business plan; (d) BIA failed to consider whether it could discharge additional

responsibilities; and (e) the intent to accept Camp 4 into trust included acceptance of land which was not owned by Applicant.

63. In short, despite the massive nature of the acquisition, the inconsistency of the project with local regulation, the lack of specificity as to the project design, the adverse environmental impacts, and the admitted inability of BIA to force Applicant to mitigate or restrain the project in the future, BIA approved the 1400 acre fee acquisition as necessary for Applicant's 136 members' needs, including land-banking for future generations.

Plaintiffs Timely Appeal to the IBIA

64. On January 29, 2015, Plaintiffs timely appealed from the Regional Director's NOD to the IBIA. On February 9, 2015, the Assistant Secretary -- Indian Affairs ("Assistant Secretary"), Kevin Washburn, assumed jurisdiction over Plaintiffs' appeal and consolidated it with other appeals of the NOD pursuant to 25 C.F.R. § 2.20(c).

65. Following the filing of Plaintiffs' appeal, several issues arose which should have compelled a supplemental environmental review of the Proposed Action. Among these additional factors were the following: (i) drought conditions worsened in Santa Barbara, California; and (ii) Applicant announced its intention to seek trust status for substantial other property it owned in fee.[7]

The January 19, 2017 Decision And Action Taken By Applicant

66. Mr. Washburn resigned as Assistant Secretary at of the end of December 2015. The position of Assistant Secretary requires a nomination by the President, subject to the advice and consent of the Senate. *See* 43 U.S.C. §§ 1453, 1453a; *see*

[7] In addition, approximately one week after the briefing was complete on the consolidated appeals of the NOD, Applicant publicly displayed a land-use map detailing its plans for Camp 4, which showed previously-undisclosed increased commercial developments along Highway 246 and 154. Applicant thereafter corrected the public map, and claimed the map that disclosed increased commercial development was inadvertently erroneous. However, the corrected map still showed expanded residential and facilities development which were not disclosed in the Camp 4 Application, and also detailed Applicant's development plans for other of its nearby properties.

also U.S. Senate Committee on Gov. Affairs, U.S. House of Representatives, Committee on Government Reform, *U.S. Government Policy and Supporting Positions* 90, 114th Congress Sess., Committee Print, Dec. 1, 2016 (Washington: GPO 2016) ("Plum Report"). No such nomination was made by President Obama after Mr. Washburn resigned. Beginning on January 1, 2016, Mr. Roberts, who had been the Principal Deputy, became the Acting Assistant Secretary, until July 28, 2016.

67. After July 28, 2016, Mr. Roberts' authority to act as Acting Assistant Secretary terminated and Mr. Roberts reverted back to being the Principal Deputy.

68. On January 12, 2017, a week before the Decision affirming the NOD was issued, Kenneth Kahn, as Tribal Chairperson for the "Santa Ynez Band of Mission Indians," executed a Grant Deed conveying Camp 4 to the "United States of America in Trust for the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California." The Grant Deed was notarized by Lorrae Russell. Upon information and belief, Ms. Russell is an employee of Defendant BIA, and the Grant Deed was notarized in BIA's regional office in Sacramento, California.

69. On January 19, 2017, almost six months after his tenure as Acting Assistant Secretary ended, Mr. Roberts signed the Decision, a true copy of which is attached hereto as **Exhibit C**.

70. The Decision affirmed the NOD and concluded that the Final EA and FONSI were appropriate and adequate under NEPA. The Decision concludes as follows:

> 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.

Decision at 42. Mr. Roberts signed the Decision as "Principal Deputy Assistant Secretary – Indian Affairs." Mr. Roberts states in the Decision that, "[a]s Principal Deputy Assistant Secretary-Indian Affairs, I have delegated authority to make a determination in these appeals." Decision at 29 n.213.

71. On January 20, 2017, President Trump took office.[8] On January 20, 2017, BIA, through Regional Director Dutschke, executed an Acceptance of Conveyance accepting the Grant Deed dated January 12, 2017 which had already been delivered. The Regional Director's signature was notarized by BIA employee Ms. Lorrae Russell.

72. Upon information and belief, on January 23, 2017, Applicant announced that the federal government had taken Camp 4 into trust and that Applicant could begin the process of building homes.

73. Defendants recorded the Grant Deed and Acceptance on January 26, 2017.

74. On January 28, 2017, the County filed a complaint against Kevin Haugrud, Acting Secretary of the Interior, and others, for violation of the Administrative Procedure Act and National Environmental Policy Act, and for Declaratory and Injunctive Relief. *County of Santa Barbara v. Haugrud*, U.S. Dist. Court, C.D. California, Case No. 2:17-cv-703 (the "County Action").

The Harm To Plaintiffs Is Concrete And Irreparable Unless Defendants' Actions Are Unwound

75. Plaintiffs face irreparable harm if the NOD, Decision and Acceptance of

[8] Upon information and belief, on that same day, Reince Priebus, Assistant to the President and Chief of Staff, issued a Memorandum for the Heads of Executive Departments and Agencies, imposing an immediate regulatory freeze pending review. Plaintiffs are also informed and believe that, on that same day, Julie Lillie, Director, Office of Executive Secretariat and Regulatory Actions, issued a Memorandum to Chiefs of Staff, Bureaus and Offices, requiring all correspondence to or from the Secretary, all notices involving proposed or final policy action, all notices related to NEPA documents, and certain other matters, to be forwarded to the Office of the Executive Secretariat and Regulatory Affairs for review.

the Grant Deed are not set aside and Applicant is allowed to proceed with development of Camp 4. Plaintiffs' ability to enjoy, manage and operate the San Lucas Ranch will be irreversibly impaired, and they will face environmental and economic harm, including but not limited to the adverse impacts to their groundwater resources, air quality, visual aesthetics, traffic, noise, and wildlife resources, since they are located directly across the road from Camp 4.[9]

76. Defendants' NOD, Decision, and Defendants' actions taking Camp 4 into trust for Applicant inflict concrete environmental, aesthetic and economic injuries on Plaintiffs. The San Lucas Ranch includes a horse breeding facility, cattle ranching operations, and crops and range which form a critical part of the grazing rotation Ms. Crawford-Hall's family has practiced for generations. Ms. Crawford-Hall regularly stays on the property, enjoying the natural beauty of the land, its open spaces and wildlife and its surroundings.

77. The NOD, Decision and Defendants' action taking Camp 4 into trust for Applicant inflict concrete environmental, aesthetic and economic injuries on Plaintiffs by allowing the development on Camp 4 of dense residential units adjacent (across a narrow rural street) from Plaintiffs' property. The significant increase in traffic and noise caused by the additional residents and continual visitors will disturb the peaceful and quiet environment of San Lucas Ranch. The increased traffic, building and development, destruction of wetland, removal of local vegetation, increased water runoff, pollution and waste, nighttime lighting, paved roads, and buildings will interfere with Plaintiffs' cattle and horses and will affect the local habitat, including the wildlife on and around the San Lucas Ranch. Further, the new residents' use of

[9] In a hearing on the County's *ex parte* motion for temporary restraining order, Defendant United States, through its Department of Justice, submitted the Declaration of Kenneth Kahn, Tribal Chairman, stating that Applicant "has no plans for any construction on the approximately 1,400 acres of land referred to as 'Camp 4' in the immediate future. No construction will occur for at least the next nine (9) months." Attached hereto as **Exhibit D** is a true copy of the Kahn Declaration, filed in the County Action as Document No. 12-1. Defendant United States stated that the Decision had been issued by the Assistant Secretary.

water will deplete the wells relied upon by Plaintiffs, and the development's irrigation and landscaping will generate gray water runoff which will pollute Plaintiffs' crops and grazing fields to the south and southwest.

78. The problem is heightened, and the risks to Plaintiffs increased, because BIA has stated that it does not have authority to require Applicant to comply with the stated project. Plaintiffs have been divested of their ability to object to future urbanization and/or commercialization, now that Applicant is unfettered by the community's regulatory scheme. Indeed, Applicant's plan to provide for 1300 lineal descendents, alone, indicates an assumption of future development and the additional draining of scarce regional resources.

FIRST CLAIM FOR RELIEF

(The Decision Is An Unlawful Exercise of Executive Authority)

79. Plaintiffs repeat and reallege the foregoing allegations as if fully set forth herein.

80. The Decision is contrary to law because it states that it is final, and Defendants have taken action based upon the finality of the Decision, but the Decision was issued by the Principal Deputy who lacks authority to issue such a final decision for the Department.

81. Specifically, the Decision states that it is "final in accordance with 25 C.F.R. § 2.20(c) and no administrative review is necessary." 25 C.F.R. § 2.20(c) provides that a decision resolving an appeal is final and effective immediately if it is "signed by the Assistant Secretary – Indian Affairs." *Id.* Here, the Decision is not signed by the Assistant Secretary, but rather by the Principal Deputy.[10]

82. The Decision also states that Mr. Roberts acted "[p]ursuant to authority delegated to [him] by 25 C.F.R. § 2.4(c)." Decision at 42. Section 2.4(c) does not delegate authority to the Principal Deputy to issue final decisions for the Department.

[10] Section 2.20(c) provides that a decision signed by Deputy to the Assistant Secretary – Indian Affairs is not final because it "may be appealed to the Board of Indian Appeals." *Id.*; 25 C.F.R. § 2.6(a).

Instead, Section 2.4(c) states that the Assistant Secretary – Indian Affairs" "can decide appeals" "pursuant to the provisions of § [25 C.F.R. § 2.20]." *Id.* Section 2.20, in turn, provides that although the Assistant Secretary may assign responsibility to a Deputy Assistant Secretary – Indian Affairs to decide an appeal, but further confirms that any resulting decision by a Deputy Assistant Secretary is not final for the Department. *Id.* That is because DOI's rules grant authority to issue a final decision for the Department to the Assistant Secretary, but *not* to a Deputy Assistant Secretary.

83. The Decision also states that Mr. Roberts, "[a]s Principal Deputy Assistant Secretary – Indian Affairs," has "delegated authority to make a decision in these appeals. *See* 209 DM 8." The Decision does not identify whether, or in what manner, authority to issue final decisions for the Department was delegated to the Principal Deputy. Any such delegation would violate DOI's regulations.

84. The delegation of authority to the Principal Deputy to issue a final decision in Plaintiffs' appeal from the NOD would violate the Federal Vacancies Reform Act ("Vacancy Act"), 5 U.S.C. § 3345, *et seq*., which implements the Appointments Clause of the Constitution.

85. The Appointments Clause of the Constitution requires that officers exercising significant power be appointed pursuant to certain procedural safeguards. *See* U.S. Const. Art. II, § 2, cl. 2; *Freytag v. Comm'r of Internal Revenue*, 501 U.S. 868, 881 (1991).

86. The Department's regulations provide that only the Assistant Secretary may issue a final decision in an appeal on behalf of the Department. 25 C.F.R. §§ 2.4, 2.6, 2.20. The Assistant Secretary is an officer who is appointed by the President, by and with the consent of the Senate under the Appointments Clause.

87. The Vacancy Act establishes rules for temporarily filling vacancies for positions that require a Presidential appointment by and with the advice and consent of the Senate, *id.*, including the position of Assistant Secretary.[11]

[11] *See* 43 U.S.C. §§ 1453, 1453a; U.S. Senate Committee on Gov. Affairs, U.S. House

88. As relevant here, Section 3345 of the Vacancy Act states that "[i]f an officer of an Executive agency . . . whose appointment to office is required to be made by the President, by and with the advice and consent of the Senate . . . resigns . . . the first assistant to the office of such officer shall perform the functions and duties of the office *temporarily* in an acting capacity subject to the time limitations of section 3346." 5 U.S.C. § 3345(a) (emphasis added).

89. Section 3346 provides that an acting officer may serve "no longer than 210 days beginning on the date of the vacancy." *Id.* § 3346(a)(1), § 3348(b)(1).

90. Section 3347 explains, in relevant part, that "Sections 3345 and 3346 are the exclusive means for temporarily authorizing an acting official to perform the functions and duties of any office of an Executive agency . . . for which appointment is required to be made by the President, by and with the advice and consent of the Senate . . . ." *Id.* § 3347(a).

91. Finally, Section 3348 provides that any "action" taken by other agency officials (including the Principal Deputy) in the performance of such functions or duties to which the Vacancy Act applies "shall have no force or effect" and "may not be ratified." *Id.* § 3348(d).

92. The Assistant Secretary – Indian Affairs is an officer of the Department of the Interior who must be appointed by the President by and with the advice and consent of the Senate.

93. Assistant Secretary Washburn resigned at the end of December 2015. Under the Vacancy Act, Mr. Roberts was authorized *temporarily* to assume the role of Acting Assistant Secretary, but his authority to assume the role of Acting Assistant Secretary terminated on or about July 28, 2016. Under the Vacancy Act, after July 28, 2016, Mr. Roberts no longer could lawfully exercise the exclusive authority of the Assistant Secretary to issue a final decision for the Department in this appeal.

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of Representatives, Committee on Government Reform, *U.S. Government Policy and Supporting Positions* 90, 114th Congress Sess., Committee Print, Dec. 1, 2016 (Washington: GPO 2016) ("Plum Report").

94. Because Mr. Roberts no longer could lawfully exercise the authority of the Assistant Secretary after July 28, 2016, Mr. Roberts lacked authority to issue a final decision for the Department in this appeal. Because the office of Assistant Secretary was vacant after July 28, 2016, the Decision issued by Mr. Roberts on January 19, 2017 "shall have no force or effect." 5 U.S.C. § 3348(d).

95. Plaintiffs have been harmed by this unlawful exercise of executive authority. The Decision has resulted in immediate and concrete changes in the legal positions of the parties herein. Based on the Decision, BIA has executed an Acceptance of Conveyance and Camp 4 has been transferred into trust. Plaintiffs now face the purportedly-authorized development of Camp 4, although the Decision purporting to authorize that development is unlawful.

96. Accordingly, the Decision affirming the NOD is arbitrary, capricious and contrary to law and thus does not authorize BIA to accept the Grant Deed.

97. Plaintiffs request that this Court declare that the Decision and subsequent Acceptance of the Grant Deed are null and void, and issue an order vacating those actions.

SECOND CLAIM FOR RELIEF

(Defendants Lack Statutory Authority to Take Land Into Trust for Applicant)

98. Plaintiffs repeat and reallege the foregoing allegations as if fully set forth herein.

99. The Decision, NOD and Acceptance of Grant Deed also are unlawful because the DOI lacks authority to take Camp 4 into trust on behalf of Applicant. Applicant is not eligible for such land acquisitions under the IRA.

100. The IRA authorizes the Secretary of the Interior to acquire land "for the purpose of providing land for Indians," with title to such land being taken "in the name of the United States in trust for the Indian tribe . . for which the land is acquired." 25 U.S.C. § 5108 (formerly § 465).

101. The IRA defines "Indian" as including three possible categories, i.e., "[1] all persons of Indian descent who are members of any recognized Indian tribe now under Federal jurisdiction, and [2] all persons who are descendants of such members who were, on June 1, 1934, residing within the present boundaries of any Indian reservation, and [3] shall further include all other persons of one-half or more Indian blood." 25 U.S.C. § 5129 (formerly § 479).

102. The NOD relied on the first of the three definitions of "Indian" in concluding that Applicant was eligible for land acquisition under the IRA. The Supreme Court has determined that this definition is limited to federally recognized tribes "under federal jurisdiction" in June 1934, when the IRA was enacted. *Carcieri v. Salazar*, 555 U.S. 379 (2009).

103. This NOD's conclusion, affirmed by the Decision, that Applicant was eligible under the IRA was legally erroneous for numerous reasons, including:

a. Applicant was not an organized tribe in June 1934.
b. Applicant was not a federally recognized tribe under federal jurisdiction in June, 1934.
c. Applicant had no political status as an entity in June 1934.
d. Applicant never entered into a treaty with the United States.
e. Applicant did not have a government-to-government relationship with the United States in June 1934.
f. Applicant did not reside on a reservation within the meaning of the IRA in June 1934.
g. Applicant did not exercise tribal jurisdiction over the land on which it resided in June 1934.
h. Applicant never sought federal recognition through the administrative process, 25 C.F.R. Part 83, under which Applicant would have had to establish, among other things, that it had maintained political influence or authority over its members as an

autonomous entity from historical times to the present, and that its members descended from a historical tribe or tribes which functioned as a single autonomous political entity. 25 C.F.R. § 83.7.

i. Applicant did not adopt Articles to organize its government until 1963 and the Secretary did not approve the Articles until 1964.

104. The NOD and Decision apply legally incorrect definitions of "Indian," "reservation," and/or "tribe" under the IRA, in finding Applicant to be eligible for fee-to-trust land acquisition.

105. The administrative record does not support the conclusions that Applicant was federally recognized as a tribe or that Applicant was under federal jurisdiction in 1934.

106. The administrative record does not support the conclusion that Applicant is comprised of direct descendents of Chumash Indians, as opposed to other Native American tribes.

107. The NOD and Decision violate the United States Supreme Court's decision in *Carcieri*.

108. The NOD and Decision's conclusion that Applicant is eligible for fee-to-trust land acquisitions under the IRA is legally flawed and not in accordance with law, is arbitrary and capricious, and constitutes an abuse of discretion, and should be declared null and void.

THIRD CLAIM FOR RELIEF

(The Notice of Decision and Decision Violate NEPA)

109. Plaintiffs repeat and re-allege the foregoing allegations as if fully set forth herein.

110. The Regional Director's December 24, 2014 Notice of Decision fails to comply with NEPA, the Council on Environmental Quality's ("CEQ") implementing regulations (40 C.F.R. Part 1500), the DOI's implementing regulations, 43 C.F.R. Part

46, and federal NEPA policy.

111. Under NEPA, Defendants were required to take a "hard look" at the environmental consequences, identify the relevant areas of environmental concern, and make a convincing case that the impact is insignificant. The Defendants failed to satisfy these requirements, including for the following reasons:

a. Defendants failed to prepare an EIS, despite the fact that the Proposed Action would have a significant environmental effect and/or raises substantial questions whether it would have a significant environmental effect.

b. Defendants failed to supplement their Final EA in response to significant new circumstances and information relevant to environmental impacts and concerns about the Proposed Action.

c. Defendants failed to use an appropriate baseline for the Proposed Action.

d. Defendants relied on faulty facts and analyses, and manipulated data related to the environmental effects on groundwater, agriculture resources, wildlife habitat, air quality, traffic, visual impacts, public resources and services and public safety.

e. Defendants denied that the Proposed Action was inconsistent with land use statutes and regulations applicable to Camp 4, and, among other things, improperly assumed the fee-to-trust application was approved and that the approval had vitiated any land use regulations.

f. Defendants failed to evaluate properly the proposed and admittedly necessary mitigation measures, particularly given BIA's acknowledgement (1) that it was not able to prevent changes to proposed actions after a fee-to-trust acquisition was approved, and (2) it lacked the ability to monitor the mitigation measures as

required under NEPA.

g. Defendants did not fully and objectively evaluate the cumulative effects related to the Proposed Action.

112. Defendants ignored and/or dismissed informed and objective comments by experts, and reached conclusions based on a Proposed Action that failed to specify pertinent details for a massive land acquisition.

113. Despite the deficiencies of the Final EA, the BIA issued its FONSI on October 17, 2014, and the NOD, which relied on the FONSI, on December 24, 2014.

114. The Decision affirmed the NOD, rejected appellate arguments that supplementation was required for the environmental issues, and stated that no further administrative review is necessary.

115. Defendants have executed the Acceptance of Conveyance of the Grant Deed, and recorded the Grant Deed, taking Camp 4 into trust for Applicant.

116. Applicant has stated its intention to go forward with development of Camp 4, with physical development of Camp 4 to proceed within nine months.

117. Plaintiffs will suffer immediate and irreparable harm to the environment, and to their ability to manage their horse facilities, cattle, pasture, and crop operations, if Camp 4 is developed in a manner that is inconsistent with local regulation. Plaintiffs also face an immediate loss in the value of their property since, consistent with their commitment to the environment and to agriculture, Plaintiffs placed their property under conservation easements which preclude the property's development in perpetuity.

118. The NOD and Decision are legally flawed and not in accordance with law, are arbitrary and capricious, and constitute an abuse of discretion.

119. Plaintiffs request an order of the Court declaring that the Final EA and FONSI violate NEPA; vacating the NOD and the Decision; invalidating Defendants' actions taking Camp 4 into trust for Applicant; and directing Defendants to prepare an appropriate EIS that complies with NEPA's requirements.

FOURTH CLAIM FOR RELIEF

(The Notice of Decision And Decision Fail Adequately to Address the Regulatory Factors Governing Fee-to-Trust Acquisitions)

120. Plaintiffs repeat and reallege the foregoing allegations as if fully set forth herein.

121. The Notice of Decision fails to satisfy the DOI's regulations for land acquisitions in 25 C.F.R. §§ 151.10 and 151.11.

122. The Regional Director failed to properly scrutinize Applicant's stated "need" or "purpose" for the transfer.

123. The Regional Director failed to properly consider the tax ramifications of the Proposed Action. Applicant had withdrawn Camp 4 from the Williamson Act in conjunction with its Application, and the scope of the Proposed Action encompassed at least 143 densely-spaced new residences, at least 415 new residents, and 1300 lineal descendents, with the attendant impacts on water, traffic, air quality, waste, public safety, and other resources supported by local taxes and services.

124. The Regional Director failed to require a business plan for commercial activities on Camp 4, particularly since Applicant supplemented its land use map with additional outlined commercial activities, and there were existing commercial uses present.

125. The Regional Director failed to evaluate whether BIA could discharge additional responsibilities.

126. The Regional Director ignored the fact that the fee-to-trust requested land which Applicant did not own.

127. The NOD improperly concluded that the Secretary could take Camp 4 into trust.

128. The Decision erroneously affirmed the NOD, and concluded that the Regional Director had properly taken into account all regulatory factors.

129. Immediately following the issuance of the Decision, Defendant BIA,

through Defendant Dutschke, executed an Acceptance of Conveyance and took Camp 4 into trust for Applicant. The Grant Deed and Acceptance have been recorded.

130. The NOD and Decision are legally flawed and not in accordance with law, are arbitrary and capricious, and constitute an abuse of discretion.

131. Plaintiffs request an order of the Court declaring that the NOD and Decision are unlawful, an order vacating the NOD and Decision; and an order invalidating Defendants' action taking Camp 4 into trust for Applicant.

FIFTH CLAIM FOR RELIEF

(Mandamus Pursuant to 28 U.S.C. § 1651 To Compel Immediate Removal of Camp 4 From Trust)

132. Plaintiffs repeat and reallege the foregoing allegations as if fully set forth herein.

133. 28 U.S.C. § 1651(a) provides: "The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law."

134. Plaintiffs are entitled to judicial review of the NOD, the Decision and actions by Defendants taking Camp 4 into trust, *see* 5 U.S.C. § 702, and to temporary relief to prevent irreparable harm as a result of this action, *see* 5 U.S.C. § 705.

135. The immediate transfer of title without allowing 30 days or other adequate time to challenge the acquisition to prevent irreparable harm, as was previously provided by the DOI's self-stay rule, deprives Plaintiffs of their right to obtain temporary relief under 5 U.S.C. § 705 and prevents Plaintiffs from obtaining complete relief under 5 U.S.C. § 702.

136. Without immediate removal of Camp 4 from trust, Plaintiffs lack any other opportunity to obtain the relief sought because the Court cannot enjoin Applicant from engaging in construction activities and irreparably altering the land.

137. Accordingly, mandamus is warranted to compel Defendants to immediately remove Camp 4 from trust.

PRAYER FOR RELIEF

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

1. Declaring that the January 19, 2017 Decision is contrary to law, void, and rendered without authority, and should be vacated;

2. Invalidating, annulling, vacating and declaring illegal the January 19, 2017 Decision, which purports to affirm the December 24, 2014 Notice of Decision of Regional Director Dutschke to take Camp 4 into trust for Applicant;

3. Declaring the Defendants' determination that Applicant is eligible for fee-to-trust land acquisition under the IRA to be arbitrary and capricious, to constitute an abuse of discretion, to be contrary to law, and to be in excess of Defendants' authority;

4. Declaring that the Defendants' determination that the Final Environmental Assessment was adequate, that a Finding of No Significant Impact was proper, and that no supplemental environmental review was required before granting approval to take Camp 4 into trust, was arbitrary and capricious, constituted an abuse of discretion, and violated NEPA;

5. Declaring that the Defendants, in issuing the NOD, failed to comply with 25 C.F.R. Part 151 and that the Defendants' determination that all regulatory factors under 25 C.F.R. Part 151 were satisfied to be arbitrary and capricious, to constitute an abuse of discretion, to be contrary to law;

6. Invalidating, annulling, vacating and declaring illegal the Finding of No Significant Impact issued on October 17, 2014;

7. Invalidating, annulling, vacating and declaring illegal the December 24, 2014 Decision of Regional Director Dutschke, to take Camp 4 into trust for Applicant;

8. Invalidating, annulling, revoking, rescinding, vacating and declaring illegal the Acceptance of Grant Deed executed by Defendant Dutschke, and ordering the Defendants to undo the trust acquisition and to reconvey Camp 4 to Applicant;

9. Issuing preliminary and permanent injunctive relief and any other orders necessary to preserve the parties' rights and status pending conclusion of the review proceedings;

10. Issuing mandamus pursuant to 25 U.S.C. § 1651 to compel the Secretary to immediately remove Camp 4 from trust;

11. Awarding Plaintiffs their costs and disbursements, together with reasonable attorney's fees to the extent permitted by law; and

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

DATED: February 28, 2017

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