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12 COUNTY OF SANTA BARBARA

13 UNITED STATES DISTRICT COURT
14 FOR THE CENTRAL DISTRICT OF CALIFORNIA

15 COUNTY OF SANTA BARBARA,

Case No: 2:17-cv-703

16 Plaintiff,

**COMPLAINT FOR VIOLATION
OF THE ADMINISTRATIVE
PROCEDURE ACT AND
NATIONAL ENVIRONMENTAL
POLICY ACT; DECLARATORY
AND INJUNCTIVE RELIEF**

17 v.

18 KEVIN HAUGRUD, in his official
19 capacity as Acting Secretary of the
20 Interior; LAWRENCE ROBERTS, in
21 his official capacity as Principal Deputy
22 Assistant Secretary – Indian Affairs;
23 AMY DUTSCHKE, in her official
24 capacity as Director, Pacific Region,
25 Bureau of Indian Affairs; THE
26 DEPARTMENT OF THE INTERIOR,
27 an agency of the United States of
28 America; THE BUREAU OF INDIAN
AFFAIRS, a division of the United
States Department of Interior; and
DOES 1 through 100,

Defendants.

Plaintiff County of Santa Barbara (the “County”), by and through its
counsel, alleges as follows:

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NATURE OF THE ACTION

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2 1. This is an action pursuant to the Administrative Procedure Act
3 (“APA”), 5 U.S.C. § 701 *et seq.* and National Environmental Policy Act
4 (“NEPA”), 42 U.S.C. § 4321, *et seq.* In violation of the APA and NEPA,
5 Defendants Kevin Haugrud, Acting Secretary of the United States Department
6 of Interior (“Secretary” or “Haugrud”); Lawrence Roberts, Principal Deputy
7 Assistant Secretary – Indian Affairs, United States Department of the Interior
8 (“AS-IA” or “Roberts”); Amy Dutschke, Director of the Pacific Regional Office
9 of the Bureau of Indian Affairs (“Regional Director” or “Dutschke”); the United
10 States Department of Interior (the “Department”); and the Bureau of Indian
11 Affairs (“BIA”) (collectively “Defendants”) took unlawful, arbitrary, and
12 capricious action by issuing a decision to take over 1400 acres of land in the
13 Santa Ynez Valley, commonly referred to as Camp 4 (the “Property”), into trust
14 for the Santa Ynez Band of Chumash Indians (“Chumash Tribe”).

15 2. Defendants’ decision to take the subject land into trust failed to
16 follow the regulatory guidelines governing fee to trust acquisitions (25 C.F.R.
17 §§ 151.10 and 151.11) and is unsupported by any other statutory or regulatory
18 authority.

19 3. Defendants also failed to conduct the appropriate environmental
20 review under NEPA before approving the acquisition. Defendants failed to
21 prepare an Environmental Impact Statement as is required for all proposed
22 federal actions that may cause significant impacts to the environment, such as
23 the trust acquisition at issue here. Even the environmental review that
24 Defendants did prepare – a Final Environmental Assessment – was inadequate
25 and fundamentally flawed. Based on that flawed analysis, Defendants issued a
26 Finding of No Significant Impact for the trust acquisition.

27 4. On January 19, 2017, Defendant Roberts denied all administrative
28 appeals of the trust decision and Finding of No Significant Impact and

1 authorized Defendant Dutschke to approve the conveyance document accepting
2 the Property into trust for the Chumash Tribe, subject only to the Department
3 fulfilling certain procedural requirements. The January 19th decision was final
4 for the Department.

5 5. By this action, the County seeks declaratory relief establishing that
6 Defendants’ decisions are “arbitrary, capricious, an abuse of discretion, or
7 otherwise not in accordance with law” and also in violation of NEPA. 5 U.S.C.
8 § 706(2)(A); 42 U.S.C. § 4321, *et seq.* The County further requests equitable
9 relief vacating the unlawful fee to trust and NEPA decisions. Finally, the
10 County seeks a preliminary and permanent injunction requiring Defendants to
11 file the necessary documentation to have the Property taken out of trust and/or
12 for an order prohibiting development on the Property pending resolution of this
13 litigation.

14 **PARTIES**

15 6. Plaintiff County is a political subdivision of the State of California
16 and is administered and directed through the Board of Supervisors. The County
17 has jurisdiction over the unincorporated areas of the County. The Property at
18 issue lies within the County’s taxing and regulatory jurisdiction and is near or
19 adjacent to County owned property.

20 7. Defendant Kevin Haugrud is the Secretary of the United States
21 Department of Interior and is named herein in his official capacity. In his
22 capacity as Secretary, Defendant Haugrud exercises ultimate authority,
23 supervision and control over Defendants Roberts and Dutschke and their
24 subordinates within the United States Bureau of Indian Affairs, a bureau within
25 the Department of Interior. Defendant Haugrud has delegated to Defendant
26 Roberts the authority to make decisions concerning the acceptance of land into
27 trust for Native American tribes.

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1 8. Defendant Lawrence Roberts is the Principal Deputy Assistant
2 Secretary – Indian Affairs of the United States Department of Interior and is
3 named herein in his official capacity. In his capacity as Principal Deputy AS-
4 IA, Defendant Roberts exercises supervisory authority and control over the
5 BIA, including Defendant Dutschke and her subordinates.

6 9. Defendant Amy Dutschke is the Director of the Pacific Regional
7 Office, Bureau of Indian Affairs and is named herein in her official capacity.
8 As Regional Director, Defendant Dutschke exercises direct supervisory
9 authority and control over the BIA’s Pacific Region, which covers the State of
10 California. She oversees the operation of the Regional Office and the four BIA
11 Agencies, including the Southern California Agency. The Chumash Tribe
12 Reservation and Property are located within the jurisdiction of the BIA’s Pacific
13 Region.

14 10. Defendants Haugrud, Roberts, and Dutschke are officers or
15 employees of the United States and have direct or delegated statutory duties in
16 carrying out the provisions of the Indian Reorganization Act (“IRA”), codified
17 at 25 U.S.C. § 5108 and the Code of Federal Regulations, Title 25, INDIANS,
18 Part 151, in taking land into trust for the benefit of a Native American Tribe.

19 11. Defendant the Bureau of Indian Affairs is part of the United States
20 Department of Interior and is an agency of the United States of America acting
21 as trustee of the welfare of the federally recognized tribes of Native Americans.
22 In that role, the BIA proposes to take the subject property into trust for the
23 Chumash Tribe.

24 12. Defendant the Department of Interior is an agency of the United
25 States of America having responsibility for the management of federal land and
26 the administration of programs relating to Native American Indians, including
27 the fee-to-trust process for Native American Indians. In that role, the

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1 Department oversees the BIA and the taking of the subject property into trust
2 for the Chumash Tribe.

3 13. County is ignorant of the true names and capacities of Defendants
4 sued herein as DOES 1 through 100, inclusive, and therefore sues these
5 Defendants by these fictitious names. County will amend or seek leave of this
6 Court to amend this Complaint when those names and capacities are
7 ascertained.

8 **JURISDICTION AND VENUE**

9 14. This Court has original jurisdiction over this action pursuant to 5
10 U.S.C. § 701 *et seq.* and 28 U.S.C. §§ 1331 and 2201-2202 as County seeks
11 judicial review of two final agency actions by Defendants: (1) the decision to
12 accept into federal trust status, for the benefit of the Chumash Tribe, title to
13 certain lands located in Santa Barbara County, California purportedly under the
14 authority granted in Section 5 of the IRA; and (2) the decision finding the Final
15 Environmental Assessment to be an adequate environmental review for the trust
16 acquisition and Finding of No Significant Impact purportedly under the
17 National Environmental Policy Act, 42 U.S.C. § 4321, *et seq.* The United
18 States has waived its sovereign immunity from suit under 5 U.S.C. § 702.

19 15. Venue is proper in the Central District of California by virtue of 28
20 U.S.C. § 1391(e)(1)(B) because the events or omissions giving rise to the claim
21 and the Property is located in this district.

22 **FACTUAL ALLEGATIONS COMMON TO**
23 **ALL CLAIMS FOR RELIEF**

24 **The Chumash Tribe, Its Reservation and Trust Lands**

25 16. The Chumash Tribe has 136 tribal members and 1,300 lineal
26 descendants. Its initial reservation land is 138 acres located on the south side of
27 highways 246 and 154 in the Santa Ynez Valley in Santa Barbara County

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1 (“Reservation”). Of the 138 acre Reservation, at least 26 acres currently have
2 residential capacity and 16 acres have economic development capacity.

3 17. The Chumash Tribe also has approximately 9.2 additional acres of
4 land in the Santa Ynez Valley for which the Department has issued a Notice of
5 Decision stating its intent to take the land into trust.

6 18. Effective July 1, 2015, the County and Chumash Tribe entered into
7 an agreement for fire protection and emergency medical services within the
8 then-existing boundaries of the Chumash Tribe’s Reservation, which did not
9 include the Property at issue. The agreement is still in place.

10 19. Effective January 1, 2015, the County and Chumash Tribe entered
11 into an agreement for law enforcement services for the Reservation within the
12 then-existing boundaries of the Chumash Tribe’s Reservation, which did not
13 include the property at issue. This agreement is still in place.

14 20. Effective August 30, 2016, the County and Chumash Tribe entered
15 into an agreement for general law enforcement services specifically to help the
16 Chumash Tribe mitigate the effects of its expanded Alcohol Beverage Control
17 license at the Chumash Tribe’s casino. This agreement is still in place.

18 **The Property at Issue**

19 21. In 2010, the Tribe purchased five contiguous parcels of land: (a)
20 Parcel 1 - APNs 141-121-051 and 141-140-010; (b) Parcel 2 – APN 141-140-
21 010; (c) Parcel 3 – APNs 141-230-023 and 141-140-010; (d) Parcel 4 – APNs
22 141-240-002 and 141-140-010; and (d) Parcel 5 – APN 141-230-023.

23 22. The Property totals 1,433 acres (1,411.1 acres plus 21.9 acres of
24 rights-of-way) and is located in the middle of the Santa Ynez Valley in Santa
25 Barbara County, California. It is directly off of State Highway 154 between
26 Baseline Avenue and Armour Ranch Road and is zoned exclusively for
27 agriculture. The parcels are mostly pristine and home to an intact, self-
28 sustaining oak woodland and active agriculture.

1 23. The Property is under an existing Williamson Act Contract and has
2 been preserved for agricultural use by the Williamson Act Contract since at
3 least 1971. On July 1, 2013, the Tribe passed Resolution 931 which requires
4 compliance with the existing Williamson Act contract until the contract expires
5 on December 31, 2022.

6 24. The Property is approximately 1.75 miles from the Chumash
7 Tribe’s Reservation and does not have any shared boundaries with the
8 Reservation.

9 **The Chumash Tribe Submits a Tribal Consolidation and Acquisition Plan**
10 **in March 2013**

11 25. In March 2013, the Chumash Tribe submitted a Tribal
12 Consolidation and Acquisition Plan (“TCA”) to the BIA. The TCA requested
13 that the authorized representative of the Secretary of Interior acquire and
14 consolidate 11,500 acres of land in the Santa Ynez Valley, including the
15 Property, in trust status for the Chumash Tribe.

16 26. In the TCA, the Chumash Tribe claimed that the land was needed
17 to increase the “tribal land base” and provide sufficient land for housing,
18 economic development and governmental purposes.

19 27. The majority of the land included in the TCA is owned in fee by
20 non-Indian owners and has never been titled to any Indian interests or part of
21 any reservation boundary. The TCA purported to be based on a historical claim
22 of title to the land through the Catholic Church.

23 28. The Chumash Tribe did not provide any evidence supporting the
24 factual basis for the TCA, legal analysis regarding fractional interests that
25 would justify its TCA, or an environmental analysis of the impact of the
26 proposed TCA.

27 29. Defendant Dutschke approved the TCA on June 17, 2013 without
28 amendment, findings of fact, or analysis. In approving the TCA, Defendant

1 Dutschke failed to comply with NEPA and issued a wholly arbitrary and
2 capricious decision that was contrary to law and without a correct or adequate
3 factual basis.

4 30. Based on information and belief, Defendant Dutschke also did so
5 without providing notice or an opportunity to comment to any interested party,
6 including the County, in violation of administrative due process.

7 31. After it became aware of the TCA, the County timely filed a notice
8 of appeal of the approval on September 11, 2013 with the BIA's Interior Board
9 of Indian Appeals ("IBIA"). Several other interested parties also appealed the
10 June 17, 2013 approval.

11 32. On October 11, 2013, the Chumash Tribe withdrew its TCA and
12 requested that the BIA dismiss any appeals relating to the TCA decision.
13 Following the withdrawal, on October 31, 2013, the IBIA dismissed the TCA
14 appeals as moot and vacated Defendant Dutschke's June 17, 2013 approval
15 decision.

16 **Prior to the TCA Appeal and Withdrawal of the TCA, the Chumash Tribe**
17 **Submits a Fee-to-Trust Application for the Property and the BIA Releases**
18 **an Environmental Assessment Related to It**

19 33. In July 2013, in accordance with Tribal Resolution No. 930, the
20 Chumash Tribe submitted an application pursuant to 25 C.F.R. Part 151
21 requesting that the BIA accept the Property into trust on behalf of the Tribe
22 ("Initial Fee-to-Trust Application"). The Initial Fee-to-Trust Application was
23 premised on there being an approved TCA and on that basis the Property being
24 contiguous to the Reservation.

25 34. In August 2013, the BIA released an Environmental Assessment
26 ("EA") for the Initial Fee-to-Trust Application for public review and comment.
27 The EA identified two alternatives for development of the Property,
28 Alternatives A and B, and a third alternative of no action, Alternative C.

1 Alternative A consists of converting the 1,433 acre property into 143 five-acre
2 residential lots, covering 793 acres. The Property would also include 206 acres
3 of vineyards, 300 acres of open space/recreational, 98 acres of riparian corridor,
4 33 acres of oak woodland conservation, and 3 acres of Special Purpose Zone for
5 utilities.

6 35. Alternative B consists of 143 one-acre residential lots for tribal
7 members, covering approximately 194 acres with roadways. Under Alternative
8 B, the Property also would include 869 acres of open space/recreational use, 30
9 acres of tribal facilities, and the same acreages of vineyard, riparian corridor,
10 oak woodland conservation, and utilities as Alternative A. The tribal facilities
11 would include a meeting hall, kitchen, breakroom, private office (13 rooms),
12 conference room, general office, training room, and circulation area. The
13 community center proposes 100 special events per year of up to 400 attendees.

14 36. Based on the development alternatives provided in the EA, the
15 proposed project would, at a minimum, bring substantially more people to a
16 largely agricultural area and significantly change the land uses on the Property.

17 37. On September 17, 2013, the BIA issued a Notice of (Non-Gaming)
18 Land Acquisition Application seeking comments on the Initial Fee-to-Trust
19 Application from state and local governments concerning, among other issues,
20 property taxes, special assessments, governmental services provided to the
21 Property, if any, and zoning.

22 38. On October 7, 2013, the County timely submitted extensive
23 comments to the BIA regarding the deficiencies of the EA.

24 39. Subsequently, on October 31, 2013, the County timely submitted a
25 response in opposition to the Initial Fee-to-Trust Application.

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1 **The Chumash Tribe Submits an Amended Fee-to-Trust Application for the**
2 **Property and the BIA Releases a Final EA for the Acquisition**

3 40. In November 2013, in accordance with Tribal Resolution No.
4 930A, the Chumash Tribe submitted another application pursuant to 25 C.F.R.
5 Part 151 requesting that the BIA accept the Property into trust on behalf of the
6 Tribe. The Chumash Tribe again stated that the purpose of the application was
7 for tribal housing and supporting infrastructure on a portion of the property, and
8 economic pursuits, long range planning and land banking (the “Amended Fee-
9 to-Trust Application”). The Amended Fee-to-Trust Application, however,
10 removed references to the withdrawn and vacated TCA.

11 41. On November 19, 2013, the BIA issued a Notice of (Non-Gaming)
12 Land Acquisition Application for the Amended Fee-to-Trust Application
13 seeking comments from state and local governments regarding property taxes,
14 special assessments, governmental services provided to the Property, if any, and
15 zoning.

16 42. On December 17, 2013, the County timely submitted a response in
17 opposition to the Amended Fee-to-Trust Application.

18 43. In May 2014, the BIA released a Final EA for the Amended Fee-to-
19 Trust Application for public review and comment.

20 44. On July 11, 2014, the County timely submitted comments on the
21 Final EA.

22 **The Department Improperly Issues a Finding of No Significant Impact**

23 45. On October 17, 2014, Defendant Dutschke issued a Finding of No
24 Significant Impact (“FONSI”) based on the Final EA for the proposed trust
25 acquisition. The FONSI found that “[b]ased on the entire administrative record
26 including the analysis in the Final Environment Assessment (EA) and
27 consideration of comments received during the public review period, the BIA
28 makes a finding of no significant impact (FONSI) for the federal action to

1 acquire approximately 1,411 acres plus rights of way into trust and subsequent
2 implementation of Alternative A (Five-Acre Housing Plots) or Alternative B
3 (One-Acre Housing Plots).”

4 46. The trust acquisition, however, is a major federal action that raises
5 substantial questions about whether it may significantly effect the environment,
6 due to both its context and intensity. It proposes to take over 1400 acres of land
7 in a largely rural area into trust for urban development.

8 47. The trust acquisition and proposed development:

9 a. Would implicate unique geographic considerations such as
10 conversion of prime agricultural farmland.

11 b. Would threaten land use and regulatory requirements
12 imposed for the protection of the environment and community.

13 c. Would impact public health and safety concerns, such as the
14 demand for public safety services, groundwater and wastewater resources, air
15 quality, and traffic control.

16 d. Would impact threatened or endangered species habitat and
17 other unique habitat involving oak trees, the Vernal Pool Fairy Shrimp and the
18 Western Pond Turtle.

19 e. Are controversial as shown by the debate among many
20 interested parties and experts as to the environmental effects of the project; and

21 f. Would have adverse impacts.

22 48. Due to these potential, significant environmental impacts,
23 Defendants were required to prepare an Environmental Impact Statement
24 (“EIS”) for the project and not only an EA.

25 49. Even in the EA that Defendants prepared for the project, however,
26 Defendants failed to use an appropriate baseline, failed to disclose all
27 components of the proposed project, and failed to take the required “hard look”
28 at the negative environmental impacts of the project.

1 50. In particular, the EA used a present-day baseline for the project,
2 when the proposed development under the project will not begin until 2023.

3 51. The EA also did not disclose the main components of the proposed
4 project – the full scope of the residential and tribal facility developments.
5 Consequently, the County could not determine the number of new people that
6 would be accessing the Property and all of the impacts resulting therefrom.

7 52. Additionally, the EA minimized and failed to take the required
8 hard look at known negative impacts, including at least the following:

9 a. On and off-site agricultural resources, including loss of
10 grazing operations, urbanization of agriculture land, and compatibility with
11 adjacent agricultural properties.

12 b. Resources use patterns, including land use types and
13 densities and the conflicts with numerous land use plans and regulations, such
14 as the County Comprehensive Plan, the Santa Ynez Valley Community Plan,
15 the Williamson Act Contract, County’s Uniform Rules, agricultural zoning, the
16 County’s Agricultural Buffer and Grading ordinances, and the County’s
17 Outdoor Lighting Regulations for the Santa Ynez Valley Community Plan Area.

18 c. Land, water, and living resources, including the increased
19 risk of pests, insects, diseases, and weeds to neighboring properties,
20 groundwater water quality and resources, wastewater, removal of oak trees and
21 critical habitat for Vernal Pool Fairy Shrimp, proximity to the Western Pond
22 Turtle, and air quality.

23 d. Socioeconomic conditions, including public service needs
24 for fire, emergency medical services, sheriff services, solid waste, schools, and
25 parks and recreation, and the loss of tax income.

26 e. Other values such as traffic and visual impacts.

27 53. Defendants also failed to properly support the EA that was
28 prepared for the project. The EA contains numerous improper assumptions,

1 faulty factual findings, and conclusory statements, including, but not limited to,
2 the following:

3 a. The faulty conclusion that the proposed housing
4 development would be similar to surrounding uses.

5 b. The faulty finding that County Fire would provide structural
6 fire protection services to the Property.

7 c. The faulty finding that wildland fire protection for the
8 Property would be primarily served by County Fire through an existing service
9 agreement with California Department of Forestry and Fire Protection.

10 d. The faulty finding that County Fire employs a firefighter-to-
11 pollution ratio and response time standard.

12 e. The faulty conclusion that no significant adverse impact to
13 911 emergency calls would occur.

14 f. The faulty conclusion that no significant adverse impact to
15 law enforcement would occur.

16 g. The faulty conclusion that no significant adverse impacts to
17 schools, parks, and recreation would occur.

18 h. The unsupported and faulty conclusion that Alternatives A
19 and B would result in no significant adverse impacts to the resources studied or
20 less than significant adverse impacts with mitigation.

21 54. Finally, Defendants did not consider the cumulative impacts of the
22 proposed project, fully analyze mitigation measures, or adequately analyze
23 alternatives in the EA as follows:

24 a. In discussing the cumulative impacts, Defendants failed to
25 include all past, present, and reasonably foreseeable projects and failed to
26 provide sufficient information to determine the scope of the cumulative impacts
27 analysis.

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1 b. For mitigation measures, Defendants failed to adequately
2 mitigate or merely listed, but did not provide a reasoned discussion of their
3 suggested water quality, air quality, public services, and biological resource
4 mitigation measures.

5 c. As to the alternatives, Defendants did not adequately analyze
6 the No Action Alternative but simply assumed development on the Property was
7 barred if the Property was not taken into trust. They also failed to analyze other
8 viable alternatives, such as off-site options (including other properties owned by
9 the Chumash Tribe), a re-build of the existing Reservation, clustered
10 development on the Property, or taking less land into trust.

11 **The Regional Director Improperly Approved the Fee-to-Trust Acquisition**

12 55. On December 24, 2014, Defendant Dutschke, acting in her capacity
13 as the Pacific Regional Director, BIA, issued a Notice of Decision (“NOD”) to
14 take title to the Property in trust for the benefit of the Chumash Tribe.

15 56. The NOD stated the BIA’s “intent to accept the Property into trust
16 and vest title in the United States of America in trust for the Santa Ynez Band
17 of Chumash Mission Indians of the Santa Ynez Reservation of California in
18 accordance with the Indian Reorganization Act of 1934 (25 U.S.C. § 465).”

19 57. The NOD is legally deficient as the criteria contained in 25 C.F.R.
20 §§ 151.10 and 151.11 have not been satisfied.

21 58. At least the following statutory standards have not been met:

22 a. The NOD fails to establish or adequately address the
23 Chumash Tribe’s need for additional land to be taken into trust.

24 b. The NOD fails to adequately address the purpose for the
25 land to be taken into trust.

26 c. The NOD does not include any detail regarding the business
27 purposes to which the Chumash Tribe intends to use a portion of the Property.

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1 d. The NOD fails to adequately address the substantial and
2 significant negative impacts on the County including significant tax revenue
3 loss, expanded needs for public services to the Property, land use conflicts, and
4 jurisdictional problems.

5 e. The NOD does not adequately address the BIA’s ability to
6 discharge its additional duties associated with taking the land into trust.

7 f. The NOD does not adequately address the off-Reservation
8 location of the land or the BIA’s obligation to give greater scrutiny to the
9 Chumash Tribe’s Amended Fee-to-Trust Application due to its location.

10 59. Further, the NOD is based on an improper environmental review
11 for a project of this significance and does not adequately address whether
12 compliance with NEPA was met. The NOD relies on the FONSI and Final EA,
13 which are inadequate for the proposed federal action under NEPA.

14 **The County Timely Appeals the Regional Director’s Decision**

15 60. On January 22, 2015, the County timely appealed the NOD and
16 FONSI to the IBIA.

17 61. On January 30, 2015, Defendant Roberts took jurisdiction over the
18 appeal pursuant to 25 C.F.R. § 2.20.

19 62. The County’s appeal had the effect of staying the Camp 4 trust
20 acquisition as a decision by a Regional Director is not final for the Department.
21 The decision only becomes final for the Department if it is either affirmed by
22 the IBIA or the AS-IA on appeal.

23 **Significant New Facts Relevant to the Environmental Concerns of the**
24 **Camp 4 Trust Acquisition Arose Prior to a Final Decision by the**
25 **Department**

26 63. Following the filing of the appeal, in June 2015, the Tribe
27 purchased approximately 350 acres of land in the Santa Ynez Valley that are
28 approximately .6 miles from the Tribe’s Reservation.

1 64. The 350 acre property is not under a Williamson Act Contract and
2 is surrounded by parcels zoned for residential, commercial, and agricultural
3 uses.

4 65. The 350 acre property would provide sufficient land to build 143
5 homes and a 30 acre tribal facility, with land remaining, which was the
6 preferred development alternative identified in the FONSI. The 350 acre
7 property therefore is a viable alternative to taking Camp 4 into trust.

8 66. Taking a 350 acre property into trust instead of 1,400+ acres,
9 which is in a different location that is closer to other residential and commercial
10 uses, could have less impact to several environmental resources. The
11 availability of this alternative is a significant new circumstance bearing on the
12 proposed action's environmental concerns and impacts that requires
13 supplemental environmental review under NEPA.

14 67. In addition, subsequent to the issuance of the Final EA for the
15 project, the drought conditions in California worsened. These worsened
16 conditions were not analyzed and require supplemental environmental review
17 under NEPA.

18 68. Further, on March 1, 2016, the Tribe provided the County with a
19 map that detailed its plans for land uses on the Camp 4 property and adjoining
20 properties owned by the Tribe. The land use map showed increased
21 development on Camp 4 and uses on adjoining lands that were not previously
22 disclosed. It also indicated that the Tribe intends to seek trust status for all of
23 the land that it owns in the area, including the 350 acre property.

24 69. The proposed land use map also constitutes significant new
25 information that requires supplemental environmental review under NEPA. The
26 information contained on the land use map is relevant to the environmental
27 concerns of the Camp 4 trust acquisition, such as the environmental impacts of

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1 Camp 4, the cumulative impacts of Camp 4, and the alternatives analysis for
2 Camp 4.

3 70. The proposed land use map also requires supplementation of the
4 NOD as the Regional Director did not have information regarding all proposed
5 uses of Camp 4 sufficient to address the fee-to-trust criteria.

6 **Despite the Numerous Issues with the FONSI and NOD, the Department**
7 **Affirmed the Camp 4 Trust Acquisition and the Department Took the**
8 **Property Into Trust**

9 71. On January 19, 2017, Defendant Roberts denied the County’s
10 appeal, affirmed the Camp 4 NOD, and found the Final EA and FONSI
11 appropriate and adequate environmental review for the project.

12 72. Through such denial of the appeal, the NOD and environmental
13 review became final as applied and no further exhaustion of administrative
14 remedies is necessary or possible.

15 73. On January 20, 2017, Defendant Dutschke executed an Acceptance
16 of Conveyance accepting the grant of the Property.

17 74. On January 23, 2017, the Chumash Tribe announced that the
18 federal government had taken the Property into trust and that the Chumash
19 Tribe now could begin the process of building homes.

20 75. On January 26, 2017, the Chumash Tribe recorded a Grant Deed
21 conveying the Property to the United States of America in trust for the Chumash
22 Tribe.

23 **FIRST CLAIM FOR RELIEF**
24 **(Violation of 42 U.S.C. § 4321, et seq.**
25 **Against All Defendants)**

26 76. County realleges and incorporates by reference each and every
27 allegation set forth in Paragraphs 1 through 75 above as though fully set forth
28 here.

1 77. Defendants’ approval of the Final EA, issuance of a FONSI, and
2 decisions pursuant to 25 C.F.R. Part 151 violated the National Environmental
3 Policy Act, 42 U.S.C. § 4321, *et seq.*, the Council on Environmental Quality’s
4 (“CEQ”) implementing regulations, 40 C.F.R. Part 1500, the Department’s
5 implementing regulations, 43 C.F.R. Part 46, and long-established federal
6 policies under NEPA.

7 78. Under NEPA and its implementing regulations, Defendants are
8 required to take a “hard look” at the environmental impacts of any Federal
9 action that may affect the environment and consider the overall impact of such
10 action on resources. 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1500.1; *Robertson v.*
11 *Methow Valley Citizens Council*, 490 U.S. 332, 350, 109 S. Ct. 1835 (1989).

12 79. In doing so, Defendants must provide the public with sufficient
13 information to permit members of the public to weigh in and inform the agency
14 decision-making process. *Sierra Nevada Forest Protection Campaign v.*
15 *Weingardt*, 376 F.Supp.2d 984, 991-92 (E.D. Cal. 2005).

16 80. When the proposed federal action will have a significant
17 environmental effect or raises substantial questions regarding the environmental
18 effect of a proposed federal action, Defendants must prepare an EIS. 42 U.S.C.
19 § 4332(2)(C); 40 C.F.R. § 1502.3; 43 C.F.R. § 46.400; *Blue Mountain*
20 *Biodiversity Project v. Blackwood*, 161 F.3d 1208 (9th Cir. 1998).

21 81. In addition, NEPA imposes a continuing duty on federal agencies
22 to supplement EAs and EISs in response to “significant new circumstances or
23 information relevant to environmental concerns and bearing on the proposed
24 action or its impacts.” 40 C.F.R. § 1502.9(c)(1)(ii); *Greater Gila Biodiversity*
25 *Project v. United States Forest Service*, 926 F.Supp. 914, 916–17 (D. Ariz.
26 1994).

27 82. Defendants failed to comply with NEPA by not preparing an EIS in
28 violation of 42 U.S.C. § 4332(2)(C); 40 C.F.R. § 1502.3; and 43 C.F.R. §

1 46.400 because the proposed federal action raises substantial questions about
2 whether it will have a significant effect on the environment. 40 C.F.R. §
3 1508.27; *Blue Mountain Biodiversity Project v. Blackwood*, 161 F.3d 1208 (9th
4 Cir. 1998); *Anderson v. Evans*, 371 F.3d 475, 494 (9th Cir. 2004).

5 83. Defendants failed to comply with NEPA by not using an
6 appropriate baseline for the proposed project in the Final EA. *Western*
7 *Watersheds Project v. Bureau of Land Management*, 552 F.Supp.2d 1113,
8 1126-27 (D. Nev. 2008).

9 84. Defendants failed to comply with NEPA by not disclosing the full
10 scope of the proposed project in the Final EA. *Sierra Nevada Forest Protection*
11 *Campaign*, 376 F.Supp.2d at 991-92.

12 85. Defendants failed to comply with NEPA because the Final EA does
13 not take the requisite “hard look” and overlooks or improperly minimizes many
14 of the significant, adverse environmental impacts of the trust acquisition,
15 including at least the following: (1) agricultural resource impacts; (2) resources
16 use patterns; (3) land, water, and living resources impacts; (4) socioeconomic
17 conditions; and (5) other values such as traffic and visual impacts. 40 C.F.R. §
18 1508.8; *Sierra Nev. Forest Protection Campaign v. Weingardt*, 376 F.Supp.2d
19 984, 991 (E.D. Cal. 2005).

20 86. Defendants failed to comply with NEPA by making improper
21 assumptions, faulty factual findings, and conclusory statements without
22 adequate basis. *Native Ecosystems Council v. Weldon*, 697 F.3d 1043, 1053
23 (9th Cir. 2012).

24 87. Defendants failed to comply with NEPA as they did not adequately
25 consider the cumulative impacts of all applicable past, present, and reasonably
26 foreseeable projects in the Final EA. 40 C.F.R. § 1508.7.

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1 88. Defendants failed to comply with NEPA as they did not include a
2 reasoned discussion of the listed mitigation measures in the Final EA or provide
3 adequate mitigation to reduce impacts to an insignificant level. *Neighbors of*
4 *Cuddy Mt. v. U.S. Forest Serv.*, 137 F.3d 1372, 1380 (9th Cir. 1998).

5 89. Defendants failed to comply with NEPA as they did not study,
6 develop or describe appropriate alternatives to the proposed federal action in the
7 Final EA. 42 U.S.C. § 4332(2)(E); 40 C.F.R. § 1502.14; 43 C.F.R. § 46.310.

8 90. Defendants failed to comply with NEPA by not supplementing the
9 environmental review for the Camp 4 trust acquisition when significant new
10 circumstances and facts bearing on Camp 4’s environmental concerns and
11 impacts became known prior to a final decision by the Department. 40 C.F.R. §
12 1502.9(c)(1)(ii).

13 91. Notwithstanding the foregoing violations of NEPA, Defendant
14 Dutschke issued a FONSI on October 17, 2014.

15 92. On January 19, 2017, Defendant Roberts unlawfully upheld the
16 BIA’s use of an EA and FONSI for the trust acquisition of the Property and
17 found that supplementation of the environmental record was not required.

18 93. Defendants have completed taking the Property into trust on behalf
19 of the Chumash Tribe based upon the FONSI.

20 94. Because of the above-mentioned violations of NEPA, the County
21 will suffer immediate and irreparable harm if Defendants are not ordered to take
22 the Property out of trust and/or enjoined from development of the Property
23 pending the completion of an environmental review process which complies
24 with the provisions of NEPA and the regulations promulgated thereunder.

25 95. The County lacks an adequate remedy at law.

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SECOND CLAIM FOR RELIEF

(Violation of 5 U.S.C. § 706 (APA) Against All Defendants)

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3 96. County realleges and incorporates by reference each and every
4 allegation set forth in Paragraphs 1 through 95 above as though fully set forth
5 here.

6 97. The Indian Reorganization Act (“IRA”), 25 U.S.C. § 5108 gives
7 the Secretary prescribed discretionary authority to take land into trust under
8 certain circumstances. The Secretary’s discretionary authority is subject to
9 compliance with the Department’s Land Acquisition Regulations, 25 C.F.R.
10 Part 151, which were promulgated to implement the IRA.

11 98. The Secretary must consider the criteria identified in 25 C.F.R. §§
12 151.10(a)-(c), 151.10(e)-(h), and 151.11(a)-(d) in evaluating tribal requests for
13 the acquisition of lands in trust status when the land is located outside of and
14 non-contiguous to a tribe’s Reservation.

15 99. Per sections 151.10(b) and 151.11(a), the Department must
16 consider the need of the Chumash Tribe for the land to be taken into trust on its
17 behalf. In the NOD, the Regional Director violated 151.10(b) and 151.11(a) by
18 failing to adequately address the need for all parcels or the majority of the acres
19 to be taken into trust. Defendant Roberts upheld the Regional Director’s
20 inadequate findings.

21 100. Per sections 151.10(c) and 151.11(a), the Department must
22 consider the purpose for which the land will be used. In the NOD, the Regional
23 Director violated 151.10(c) and 151.11(a) by failing to adequately evaluate all
24 current and proposed uses of the Property. Defendant Roberts upheld the
25 Regional Director’s inadequate findings.

26 101. Per sections 151.10(e) and 151.11(a), the Department must
27 consider the impact on the State and its political subdivisions resulting from
28 removal of the land from the tax rolls. In the NOD, the Regional Director

1 violated 151.10(e) and 151.11(a) by failing to adequately address the actual tax
2 loss in relation to the public services and area. Defendant Roberts upheld the
3 Regional Director's inadequate findings.

4 102. Per sections 151.10(f) and 151.11(a), the Department must
5 consider jurisdictional problems and potential conflicts of land use which may
6 arise. In the NOD, the Regional Director violated 151.10(f) and 151.11(a) by
7 failing to address the actual conflicts that could arise and inaccurately
8 concluding that the proposed land uses for the Property would be consistent
9 with surrounding uses. Defendant Roberts upheld the Regional Director's
10 inadequate findings.

11 103. Per sections 151.10(g) and 151.11(a), the Department must
12 consider whether the BIA is equipped to handle the additional responsibilities
13 resulting from the acquisition of the land into trust status. In the NOD, the
14 Regional Director violated 151.10(g) and 151.11(a) by concluding that the BIA
15 will not have any additional duties in reliance on an inaccurate analysis of the
16 provision of public services in the area. Defendant Roberts upheld the Regional
17 Director's incorrect and inadequate findings.

18 104. Per section 151.11(b), the Department must consider the location
19 of the land relative to the boundaries of the tribe's Reservation and apply
20 heightened scrutiny to off-Reservation acquisitions. In the NOD, the Regional
21 Director violated 151.11(b) by failing to address the need for heightened
22 scrutiny of the trust acquisition. Defendant Roberts improperly found that the
23 Regional Director fulfilled her responsibilities under section 151.11(b).

24 105. Per section 151.11(c), a tribe must provide a business plan if the
25 land is being acquired for business purposes. In the NOD, the Regional
26 Director violated section 151.11(c) as the Chumash Tribe did not submit or
27 prepare a business plan, but included a business purpose in their proposed uses
28 of the subject Property. Defendant Roberts improperly found the Regional

1 Director did not err in failing to require the Chumash Tribe to submit a business
2 plan.

3 106. Notwithstanding the foregoing legal deficiencies and the failure to
4 satisfy the criteria contained in 25 C.F.R. §§ 151.10 and 151.11, Defendant
5 Dutschke issued an NOD to take the subject Property into trust and Defendant
6 Roberts has affirmed that decision, making it final for the Department.

7 107. The NOD is unlawful, unwarranted by the facts, and in excess of
8 statutory authority in that the Department violated its own regulations and
9 applicable law, abused its discretion, and acted arbitrarily and capriciously by
10 making its final determination to take the land into trust in the absence of facts
11 and law warranting the decision, all without observance of procedures required
12 by law.

13 108. County submitted extensive public comments to the BIA at every
14 available opportunity regarding the trust acquisition. On information and belief,
15 the BIA either did not respond or did not consider those comments as required
16 by law.

17 109. Due to the Department’s unwarranted and unlawful decision to
18 take the subject Property into trust, the County has suffered legal wrong and
19 been adversely affected and aggrieved by the agency action. The County will
20 suffer immediate and irreparable harm if Defendants are not ordered to take the
21 Property out of trust and/or are not enjoined from development of the Property.

22 110. The County lacks an adequate remedy at law.

23 **PRAYER**

24 WHEREFORE, the County prays for judgment against Defendants as
25 follows:

- 26 1. For a judgment declaring that Defendants, in issuing the FONSI,
27 failed to adhere to NEPA and the APA and as a result, the Property must be
28 taken out of trust;

