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8 **UNITED STATES DEPARTMENT OF INTERIOR**
9 **INTERIOR BOARD OF INDIAN APPEALS**
10

11 **IN RE: JANUARY 19, 2017 DECISION**
12 **ASSISTANT SECRETARY-INDIAN**
13 **AFFAIRS AFFIRMING DECEMBER**
14 **24,2014, DECISION OF REGIONAL**
15 **DIRECTOR TO TAKE “CAMP 4”, 1,427**
16 **ACRES OF LAND IN SANTA BARBARA**
17 **COUNTY, CALIFORNIA INTO TRUST**
18 **FOR THE SANTA YNEZ BAND OF**
19 **CHUMASH INDIANS**

NOTICE OF APPEAL

(Appeal of January 19, 2017 Decision of
Principal Deputy Assistant Secretary-Indian
Affairs rejecting Appeal of December 24,2014,
Decision of the Pacific Regional Director to
Take the Camp 4 Property into Trust)

(Statement of Reasons for Appeal is
submitted: 43 C.F.R. 4.332(a)(2) and
Certificate of Service 43 CFR 4.310(b) and 43
CFR 4.333(a))

20 Pursuant to 25 CFR Part 2 and 43 CFR Part 4, Lewis P. Geyster and Robert B. Corlett
21 (collectively “Appellants”) appeal to the Interior Board of Indian Appeals the January 19, 2017
22 DECISION of the Assistant Secretary – Indian Affairs affirming the Regional Director’s
23 December 24, 2014 decision (the “Regional Director’s Decision”) to take approximately
24 1,427.28 acres of land (known as Camp 4) in trust for the Santa Ynez Band of Chumash Indians.

25 Such DECISION was signed under alleged authority of 25 CFR 2.20(c) :“... if the
26 decision is signed by a Deputy to the Assistant Secretary - Indian Affairs, it may be appealed to
27 the Board of Indian Appeals pursuant to the provisions of 43 CFR part 4, subpart D.” and of 25
28 CFR 2.4(c) and (d) “(c) The Assistant Secretary - Indian Affairs pursuant to the provisions of §
2.20 of this part. (d) A Deputy to the Assistant Secretary - Indian Affairs pursuant to the
provisions of § 2.20(c) of this part.”

1 Notwithstanding the misleading statement in the DECISION (p. 42: “Conclusion...This
2 decision is final in accordance with 25 C.F.R. Sec. 2.20(c) and no further administrative review
3 is necessary”) regarding finality, it is clear that 43 C.F.R. 4.314 mandates that this Appeal must
4 occur and result in a final decision from the Interior Board of Indian Appeals in order to result in
5 agency action subject to judicial review: “§ 4.314 Exhaustion of administrative remedies.

6 (a) No decision of an administrative law judge, Indian probate judge, or BIA official that at the
7 time of its rendition is subject to appeal to the Board, will be considered final so as to constitute
8 agency action subject to judicial review under 5 U.S.C. 704, unless it has been made effective
9 pending a decision on appeal by order of the Board.

10 (b) No further appeal will lie within the Department from a decision of the Board.”

11
12 1. The name, address and contact information of Appellants are as follows: Lewis P.
13 Geysler and Robert B. Corlett, represented by Lewis P. Geysler of the Law Office of Lewis P.
14 Geysler, 715 Cuatro Caminos, Solvang, CA 93463, Tel. No. 805 688 2106, and Fax No. 805 688
15 2681.

16 2. The NOTICE OF DECISION being appealed is the January 19, 2017, DECISION
17 (hereinafter the “DECISION”) of the Principal Deputy Assistant Secretary- Indian Affairs
18 affirming the Regional Director’s December 24, 2014 decision (hereinafter the “Regional
19 Directors Decision”) to take into trust approximately 1,427.28 acres of land (known as “Camp
20 4”) in Santa Barbara County, California, for the Santa Ynez Band of Chumash Mission Indians
21 (hereinafter referred to as the “Tribe”). A copy of the DECISION being appealed is attached as
22 Exhibit “A” and is made a part hereof by reference.

23 3. Appellants are interested parties who reside in close proximity to Camp 4 and are
24 adversely affected by the DECISION and by the affirmed Regional Directors Decision.
25 Appellants have on January 22, 2015 filed a Notice of Appeal, and Statement of Reasons
26 regarding the Regional Directors Decision. However, as set forth in the DECISION, p.4, the
27 Office of the Assistant Secretary-Indian Affairs assumed jurisdiction over such appeal in
28 January, 2015. Several Briefs were filed by Appellants in the course of that assumed
jurisdiction. Notwithstanding the DECISION, by ipse dixit, determined that Appellants “have

1 not adequately shown any injury resulting from the decision....” The Briefs are undeniable
2 rebuttal to that statement, both factually, and legally. Appellants request that all such filings with
3 the Board of Indian Appeals and then with the Assistant Secretary-Indian Affairs be incorporated
4 into this NOTICE OF APPEAL. As the DECISION notes, p. 11, “To avoid delay in reaching an
5 outcome in this case, I review below the merits of this matter as raised by the Appellants.” The
6 record, therefore of this DECISION must include all filings by Appellants. If this is not the case,
7 Appellants will file with the Board of Indian Appeals all such items.

8 4. This NOTICE OF APPEAL has been served on interested parties as prescribed by 43
9 CFR 4.310(b) and 4.332(a)(2).

10 5. The “Statement of Reasons” for this Appeal is attached to this NOTICE OF APPEAL
11 in accordance with 43 CFR 4.332(a)(2).

12 6. Appellants request the Board to vacate the DECISION and vacate the Regional
13 Directors Decision, in each case for failure to comply with (a) the requirements of the United
14 States Constitution, Article I, Section 8, Clause 17, (b) the cases and history interpreting such
15 Clause 17, (c) Title 4 United States Code 103 and (d) Title 40 United States Code Sections
16 3112(b) and 3112(c), and (d) each and every other legal and factual item presented in the
17 Statement of Reasons and in the Briefs previously filed in the prior Appeal, and to be filed in this
18 Appeal.

19 7. Appellants further request the Board to find that the BIA, and the DEPARTMENT OF
20 INTERIOR are required to comply (a) with the United States CONSTITUTION, ARTICLE I,
21 SECTION 8, CLAUSE 17, (b) with the cases interpreting such CLAUSE 17 whereby the
22 Legislature of a State has the power to (i) withhold consent, (ii) require concurrent legislative
23 jurisdiction, (iii) require partial legislative jurisdiction, or (iv) limit the consent to Proprietary
24 Interest only, (c) with 4 USC 103, requesting the President of the United States to procure any
25 such assent of the Legislature of the State of California to any decision to take any land in
26 California into Trust and (d) with 40 USC 3112(b) and (c) “It is conclusively presumed that
27 jurisdiction has not been accepted until the Government accepts jurisdiction over land as
28 provided in this section.”

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8. All notices and communications concerning this Appeal should be directed to Lewis P. Geysler, Law Office of Lewis P. Geysler, 715 Cuatro Caminos, Solvang, CA 93463; Tel. No. 805 688 2106, Fax No. 805 688 2681.

DATED: February 15, 2017

Respectfully Submitted,

BY: _____

Lewis P. Geysler
Attorney for Appellants,
Lewis P. Geysler and Robert B. Corlett

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7
8 **BEFORE THE**
9 **INTERIOR BOARD OF INDIAN APPEALS**

10
11 **IN RE: JANUARY 19, 2017 DECISION**
ASSISTANT SECRETARY-INDIAN
12 **AFFAIRS AFFIRMING DECEMBER 24,**
13 **2014 DECISION TO TAKE “CAMP 4”,**
14 **1427 ACRES OF LAND IN SANTA**
BARBARA COUNTY, CALIFORNIA
INTO TRUST

STATEMENT OF REASONS

(Submitted with NOTICE OF APPEAL of
January 19, 2017 Decision of the Principal
Deputy Assistant Secretary-Indian Affairs
rejecting Appeal of December 24, 2014
Decision of the Pacific Regional Director to
Take the Camp 4 Property into Trust)

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18 Lewis P. Geysler and Robert B. Corlett (collectively Appellants) appeal the January 19,
19 2017 DECISION (the “DECISION”) of the Assistant Secretary-Indian Affairs rejecting the
20 Appeal of the December 24, 2014 Decision of the Pacific Regional Director of the Bureau of
21 Indian Affairs (“BIA”), United States Department of the Interior, to take into trust approximately
22 1,427 acres of land in Santa Barbara County, California, for the Santa Ynez Band of Chumash
23 Mission Indians of the Santa Ynez Reservation of California. This STATEMENT OF
24 REASONS accompanies the NOTICE OF APPEAL, which has attached to it as Exhibit “A” the
DECISION.

25 IDENTIFICATION OF THE CASE:

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27 This Appeal arises out of the DECISION of the Deputy Assistant Secretary-Indian
28 Affairs to reject the Appeal of the December 24, 2014 REGIONAL DIRECTOR’S NOTICE OF
DECISION (hereinafter referred to as the “Regional Director’s Decision) and thus to take into

1 trust approximately 1,427 acres of off-reservation land in Santa Barbara County, California, for
2 the Santa Ynez Band of Chumash Mission Indians (hereinafter the “Tribe”). The land involved
3 consists of five (5) parcels of land purchased by the Tribe, and now owned in fee by the Tribe,
4 commonly referred to together, and hereinafter referred to herein, as “Camp 4”.

5 Before, and thus after the purchase, Camp 4 was subject to all Santa Barbara County zoning and
6 use requirements set forth in its laws and regulations, as well as its general plan, all of which
7 reflect State of California legislative requirements. Santa Barbara County is a political
8 subdivision of the State of California. This zoning and planning took into account county-wide
9 considerations of traffic, policing, fire control, air quality, pollution, water, sewage, utilities,
10 roads, and school capacities and their cost, for the County in general as well as the restrictions,
11 capacity and needs of the Santa Ynez Valley in particular. They also took into account typical
12 architectural planning and aesthetic requirements, density and amount and type of development.
13 These County-wide, and Santa Ynez Valley in particular, legislative jurisdictional decisions in
14 accordance with the requirements of State of California law, adopted by the Santa Barbara
15 County authorities directly affect Camp 4. And they concurrently serve to protect the citizens of
16 the County, and the residents of, visitors to, and traffic passing throughout the Santa Ynez Valley
17 from the use of property within the planning areas which do not conform to these legislative
18 jurisdictional decisions and requirements. The failure to abide by these legislative jurisdictional
19 decisions and requirements and the contemplated proposed development of Camp 4 evidenced
20 by the DECISION and the affirmance of the Regional Director’s Decision itself, will have
21 serious and significant detrimental social, aesthetic, economic and environmental impacts which
22 will negatively affect the Appellants.

23 It is clear from the DECISION that the BIA has specifically determined that the BIA (and
24 the Department of the Interior itself) need not take into account that land placed into trust for
25 the Tribe “would then no longer be subject to State or local jurisdiction. Again, this is
26 insufficient evidence to thwart the acquisition of the lands.” (Regional Director’s Decision, p.17,
27 section 151.10(f) Jurisdictional problems and potential conflicts of land use which may arise.)
28 Such Decision continues (p.21): “Further, placing the property into trust allows the Tribe to
exercise its self-determination and sovereignty over the property....This is important, as the
inherent right to govern its own lands is one of the most essential powers of any tribal
government. As with any government, the Tribe must be able to determine its own course in

1 addressing the needs of its government and its members If the land were to remain in fee
2 status, tribal decisions concerning the use of the land would be subject to the authority of the
3 State of California and the County of Santa Barbara, impairing the Tribe’s ability to adopt and
4 execute its own land use decisions and development goals. Thus, in order to ensure the effective
5 exercise of tribal sovereignty and development prerogatives with respect to the land, trust status
6 is essential.”

7 The affirmed Regional Director’s Decision at p.22 continues: “ Factor 4-Jurisdictional Problems
8 and Potential Conflicts of Land Use Which May Arise. Santa Barbara County has current
9 jurisdiction over the land use on the property subject to this application. The County’s land use
10 regulations are presently the applicable regulations when identifying potential future land use
11 conflicts. . . . Further, the County would not have the burden of responsibility of maintaining
12 jurisdiction over the Tribal property.”

13 The affirmed Regional Director’s Decision concludes “The subject acquisition will vest title in
14 the United States of America in trust for the Santa Ynez Band of Chumash Mission Indians of
15 the Santa Ynez Reservation of California in accordance with the Indian Reorganization Act of
16 1934 (25 U.S.C. sec 465).”

17 The full briefing submitted to the Assistant Secretary and ultimately rejected by the DECISION,
18 clearly supports both the constitutional and statutory standing of the Appellants, and the rights of
19 the Appellants to contest, both before the Department of the Interior and Bureau of Indian
20 Affairs, and if necessary in federal court, any determination to take Camp 4 into trust, without
21 the approval of the legislature of the State of California.

22 However, it is important at this point to refer to the Regional Director’s Decision’s admission
23 that after Quiet Title litigation, apparently in the late 1890’s, notwithstanding assertions that the
24 Tribe was entitled to thousands of acres, the litigation was settled (Regional Director’s Decision
25 p.20) for the transfer “to the United States to be held in trust for the Tribe . . . a mere ninety-nine
26 acres.”

27 The State of California was admitted into the Union on September 9, 1850, after having been a
28 Republic before that. As a Republic it had full legislative jurisdiction over all of the lands, both

1 private and public within its boundaries. All Indian lands and tribes were subject to the
2 legislative jurisdiction of the California Republic.

3 The Act for the Admission of the State of California into the Union contained Section 3, which
4 read in part: "...the said state of California is admitted into the Union up on the express
5 condition that the people of said state, through their legislature or otherwise, shall never interfere
6 with the primary disposal of the public lands within its limits..." No mention is made of Indian
7 lands.

8 Contrasted, for example, with the California Admission Act are the following provisions of the
9 Enabling Act providing for the division of Dakota into two States and to enable North Dakota,
10 South Dakota, Montana, and Washington to form constitutions and State governments and to be
11 admitted into the Union (Approved February 22, 1889, 25 U.S. Statutes at Large, c 180 p 676:
12 Sec. 4, ...)"Second. That the people inhabiting said proposed States do agree and declare that
13 they forever disclaim all right and title to the unappropriated public lands lying with the
14 boundaries thereof, **and to all lands lying within said limits owned or held by any Indian or**
15 **Indian tribes; and that until the title thereto shall have been extinguished by the United**
16 **States, the same shall be and remain subject to the disposition of the United States, and**
17 **said Indian lands shall remain under the absolute jurisdiction and control of the Congress**
18 **of the United States;..."**

18 The Constitution of the United States of America, Article I, Section 8, Clause 3 states that the
19 "Congress shall have Power ...To regulate Commerce with foreign Nations, and among the
20 several States, and with the Indian Tribes..."

21 But such Article I, Section 8, at Clause 17 specifically provides "To exercise exclusive
22 Legislation in all Cases whatsoever... and to exercise like Authority over all Places purchased by
23 the Consent of the Legislature of the State in which the Same shall be..."

24 The clear result of the Supreme Court cases which have considered the Admission Act legal
25 effect, the limits on the Indian Commerce Clause, the special nature of the requirements of
26 Clause 17, the history leading up to the adoption of the Constitution with these clauses in it, and
27 the clauses themselves, prove that the Indian Interstate Commerce Clause cannot and does not
28 give the Congress the right to purchase (and that includes taking into Trust lands previously

1 purchased by any Indian or Indian Tribe) any land within the State without first obtaining the
2 Consent of the Legislature of such State.

3 Such constitutional requirements are codified in 4 USC 103, and 40 USC 3112(b) and 3112(c).
4 Those statutes, applicable to the Department of the Interior, specifically provide the requirements
5 that the Federal Government cannot obtain jurisdiction over State Lands without the permission
6 of the Legislature of the State involved. The Supreme Court cases make clear that that required
7 jurisdictional permission can be limited by the State Legislature to all, some or none.

8 The purpose of the language contained in the Admission Acts found in the Dakotas-Montana-
9 Washington Admission Act example cited above was to eliminate the need to abide by Clause 17
10 as to Indian Lands. The absence of such language in the California Admission Act resulted in
11 the State of California having legislative jurisdiction over Indian lands within its boundaries,
12 requiring the Congress to abide by Clause 17 in any land activities regarding Indian lands.

13 The Supreme Court decisions regarding the Indian Commerce clause make it clear that such
14 clause is subject to Clause 17, and therefore so too is the Indian Reorganization Act of 1934 cited
15 above.

16 The very enactment and continued existence of Title 4 U.S. Code section 103, and Title 40 U.S.
17 Code 3112(b) and 3112(c) confirms that the BIA and the Department of the Interior must take
18 their required route, subject to the assent of the Legislature of the State of California, in order to
19 receive permission to take Camp 4 into trust on such terms and conditions as the Legislature
20 shall impose.

21 It is clear without any doubt at all that the holding and language of *Bond v. United States*, 564
22 U.S. 211 (2011) gives Appellants the right and standing to challenge federal government failure
23 to abide by Article I, Section 8, Clause 17, whether or not the State of California, or the County
24 of Santa Barbara, a subdivision of the State of California, create or fail to create the challenge.

25 Significant briefing setting forth the case law and history in detail was provided to the Assistant
26 Secretary and will be provided once more to the Interior Board of Indian Appeals as this appeal
27 progresses. It is clear that Appellants, living in the Santa Ynez Valley, a small valley, served by
28 only two main, two lane highways, minimal school capacity, one hospital, and various other
limitations, have the capability at trial to show that they are impacted exactly as alleged, and

1 exactly as the Supreme Court has set forth as required, notwithstanding the ipse dixit of the
2 Principal Deputy Assistant Secretary-Indian Affairs. It is time for the Interior Board of Indian
3 Appeals to reverse this situation and save the parties from federal court review and proceedings.

4 All notices and communications concerning this Appeal should be directed to Lewis P.
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7 DATED: February 15, 2017

Respectfully Submitted,

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9 BY: _____
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11 Attorney for Appellants,
12 Lewis P. Geysler and Robert B. Corlett
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