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ASSISTANT SECRETARY - INDIAN AFFAIRS
UNITED STATES DEPARTMENT OF THE INTERIOR

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

v.

PACIFIC REGIONAL DIRECTOR, BUREAU OF INDIAN AFFAIRS,
APPELLEE.

Docket No: _____

APPELLANT SANTA YNEZ VALLEY ALLIANCE OPENING BRIEF

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INTRODUCTION

The Santa Ynez Valley Alliance ("Alliance") appeals (1) the December 24, 2014 NOTICE OF DECISION ("NOD") issued by the Pacific Regional Director of the Bureau of Indian Affairs ("BIA"), accepting into trust for the Santa Ynez Band of Chumash Mission Indians ("Chumash Tribe") certain property in Santa Barbara County, California, commonly known as the "Camp 4" property;[1] and (2) the October 17, 2014 issuance of a "Finding of No Significant Impact [FONSI] for the Proposed Santa Ynez Band of Chumash Indians Camp 4 Fee-To-Trust Project" and the underlying Final Environmental Assessment ("EA").

Pursuant to 25 C.F.R. §§ 151.10-151.11, the BIA must consider several factors in deciding whether to approve this fee-to-trust application for land that is not contiguous to the existing Chumash Tribe reservation. The BIA has inadequately considered several of these factors, and its decision to accept the property into trust based on an insufficient evaluation of these factors was in error. Specifically, BIA failed to adequately consider (1) compliance with the National Environmental Policy Act ("NEPA," 42 U.S.C. § 4321 *et seq.*); (2) the location of the land relative to the reservation, and the implications of that location on the local jurisdiction; and (3) actual and potential land use conflicts.

JURISDICTION AND STANDING

The Alliance appeals the NOD and FONSI pursuant to 43 C.F.R. Part 4 and 25 C.F.R. Part 2. The Alliance may appeal this case, as an interested party that is affected by BIA's decision and could be adversely affected by the decision in this appeal. 43 C.F.R. § 4.331; 25 C.F.R. § 2.2. *See Preservation of Los Olivos v. U.S. Dep't of Interior* (C.D. Cal. 2008) 635 F. Supp. 2d 1076, 1090 (upholding citizens' groups' interest in challenging fee-to-trust transfer based on environmental and

[1] AR0123.00001-AR0123.00029.

economic concerns, based on "the plain language of [BIA's] very broad and permissive regulations on standing").

FACTUAL BACKGROUND

The Chumash Tribe initially submitted its fee-to-trust application for the Camp 4 Property in July, 2013. The Camp 4 Property, owned by the Tribe in fee simple, consists of five parcels: Assessor Parcel Numbers 141-151-051, 141-140-010, 141-230-023, and 141-240-002, totaling approximately 1433 acres near the town of Santa Ynez, California. The Camp 4 Property is located approximately 1.75 miles from the Chumash Reservation and does not border the Reservation. The Camp 4 Property is within the "Santa Ynez Valley Planning Area" of Santa Barbara County, is currently zoned for agriculture in its entirety, and is currently under a Williamson Act Contract until December 31, 2022.

A Draft EA for this fee-to-trust application was released in August, 2013. In the Draft EA, one of the proposed purposes of the project at the time was to:

> [F]ulfill the purpose of the Consolidation and Acquisition Plan by providing housing within the Tribal Consolidation Area to accommodate the Tribe's current members and anticipated growth.

AR0127.00013. The Chumash Tribe had submitted the referenced Consolidation and Acquisition Plan ("Plan") to the BIA in March 2013; the Plan identified a Tribal Consolidation Area encompassing approximately 11,500 acres within the Santa Ynez Valley, including the Camp 4 site described in the Draft EA. The BIA approved the Plan on June 17, 2013. However, the Chumash Tribe subsequently withdrew the application "without prejudice" after the BIA's approval resulted in several appeals. AR0194.00012; AR0061.00003.

After withdrawing the Plan, the Chumash Tribe submitted an amended fee-to-trust application to the BIA for the Camp 4 Property in November 2013. The amended fee-to-trust application was submitted, pursuant to BIA Land

Acquisitions regulations (25 C.F.R. Part 151), in brief "for purposes of tribal housing and facilitating tribal self-determination." AR0080.00009. The Final Environmental Assessment ("Final EA") released in May, 2014, reviewed this amended application and described two alternatives for the proposed action (Alternatives A and B) and one no-action alternative (Alternative C).

In summary, under both Alternatives A and B, the entire 1433 acres of the Camp 4 Property would be taken into trust.[2] Under this alternative, 1227 acres of land zoned agriculture would be converted to other, non-agricultural uses—nearly 86% of the property. AR0194.00020-22. As with Alternative A, 1227 acres—nearly 86%—of the land zoned agriculture would be converted to other, non-agricultural uses under Alternative B.[3] AR0194.00028-31.

The Alliance submitted timely written comments on the Final EA on July 10, 2014, highlighting inadequacies in the Final EA and raising substantial questions concerning impacts to biological resources, loss of agricultural land, land use conflicts, and cumulative impacts.[4] Despite the fact that the Alliance and others submitted comments that at a minimum raise substantial questions as to the potentially significant impacts of the project, the BIA subsequently issued a FONSI on October 17, 2014, claiming that under either alternative described in the Final EA, the project was "not a federal action significantly affecting the quality of the human environment." AR0237.00001. The BIA then issued its NOD

[2] Under Alternative A, 143 five-acre residential lots would be developed; the lots and access roadways would cover over half of the property (approximately 793 acres), and there would be a 50-acre reduction in vineyard acreage.

[3] Under Alternative B, 143 one-acre residential lots would be developed; the lots and access roadways would cover approximately 194 acres of the project site; and there would be a 50-acre reduction in vineyard acreage. This Alternative also envisions development of 30 acres of Tribal Facilities (meeting hall, office spaces, 250 parking spaces, etc.

[4] The Alliance's Comment Letter on the Final EA is located at Log #116, AR0195.00172-AR0195.00205. The Alliance also commented on the Draft EA. AR0194.01580- 82.

accepting the Camp 4 Property into trust on December 24, 2014. The Alliance filed its Notice of Appeal and Statement of Reasons on February 2, 2014.

ARGUMENT

The BIA has inadequately considered several of the required factors under 25 C.F.R. § 151.10-151.11, and its decision to accept the property into trust based on insufficient evaluation of these factors was in error. Specifically, BIA failed to adequately consider (1) compliance with NEPA; (2) the location of the land relative to the reservation, and the implications of that location on the local jurisdiction, and (3) actual and potential land use conflicts.

I. The BIA Cannot Approve a Fee-to-Trust Application where the Underlying NEPA Review of the Proposed Project is Inadequate.

Pursuant to 25 C.F.R. § 151.10(h), the BIA must consider the extent to which the environmental review of the proposed project in the fee-to-trust application complies with the NEPA and its implementing Council on Environmental Quality ("CEQ") regulations (40 C.F.R. Part 1500). *See TOMAC v. Norton* (D.D.C. 2002) 193 F. Supp. 2d 182, 190, *aff'd sub nom. TOMAC, Taxpayers of Michigan Against Casinos v. Norton* (D.C. Cir. 2006) 433 F.3d 852 (holding organization had standing to challenge BIA decision to take land into trust based in part on allegations of NEPA violations, since "[BIA] regulations provide for consideration of land use conflicts and NEPA requirements.")

As described below in detail, the environmental review conducted by BIA was entirely inadequate. An EA is woefully inadequate for a project of this scope and scale, where numerous substantial questions have been raised as to the potentially significant impacts of the project. An Environmental Impact Statement ("EIS") is required to fully analyze the potentially significant impacts of the proposed project. Unless and until an adequate EIS is developed, the BIA will be unable to satisfy its requirement to consider whether compliance with NEPA was

met, and therefore cannot approve the fee-to-trust application. *See, e.g., County of San Diego, et al. v. Pacific Regional Director, BIA*, 58 IBIA 11, 35 (2013 WL 5288995, at *18) (vacating and remanding fee-to-trust acquisition in part based on inadequate environmental analysis, and ordering supplementation of EA to adequately address cumulative impacts analysis).

A. An EIS is required for the Proposed Project Due to "Substantial Questions" Raised Concerning Potentially Significant Impacts of the Project.

An EIS is required whenever there are "substantial questions" raised as to whether a project may have significant effects. *See Anderson v. Evans* (9th Cir. 2004) 371 F.3d 475, 488 ("to prevail on the claim that the federal agencies were required to prepare an EIS, the plaintiffs need not demonstrate that significant effects will occur. A showing that there are *substantial questions* whether a project may have a significant effect on the environment is sufficient.") (emphasis in original) (internal quotations and citations omitted). *See also Sierra Club v. U.S. Forest Serv.* (9th Cir. 1988) 843 F.2d 1190, 1193 ("If substantial questions are raised whether a project may have a significant effect upon the human environment, an EIS must be prepared.") (internal quotations and citations omitted).

As discussed in detail below, through numerous credible comments, the Alliance and others have raised *at a minimum* substantial questions regarding the project's environmental impacts. The Alliance raised substantial questions concerning impacts to agricultural resources, biological resources, conflicts with land use and environmental protection policies, cumulative impacts and mitigation measures. Given the substantial questions raised by the Alliance and others, an EA simply does not suffice for this project. *See, e.g., Anderson, supra*, 371 F.3d at 494 (lengthy EA still not sufficient when EIS was required) (emphasis added):

> [N]o matter how thorough, *an EA can never substitute for preparation of an EIS, if the proposed action could significantly affect the environment*…We stress in this regard that an EIS serves different purposes from an EA. An EA simply assesses whether there will be a significant impact on the environment. An EIS weighs any significant negative impacts of the proposed action against the positive objectives of the project. Preparation of an EIS thus ensures that decision-makers know that there is a risk of significant environmental impact and take that impact into consideration. As such, an EIS is more likely to attract the time and attention of both policymakers and the public.

In addition, the substantial questions raised by commenters clearly demonstrate that the potential impacts of the project are controversial. That is, "substantial dispute exists as to the size, nature, or effect" of the project. *Found. for N. Am. Wild Sheep v. U.S. Dep't of Agr.* (9th Cir. 1982) 681 F.2d 1172, 1182. NEPA is clear: when "(t)he degree to which the effects on the quality of human environment are likely to be highly controversial," an EIS is mandated. 40 C.F.R. § 1508.27(b)(4); *Wild Sheep, supra*, 681 F.2d at 1183 (knowledgeable disagreement with EA's conclusions regarding the likely effects of project warranted preparation of an EIS). *See also Sierra Club, supra*, 843 F.2d at 1193 ("affidavits and testimony of conservationists, biologists, and other experts who were highly critical of the EAs and disputed the [agency's] conclusion that there would be no significant effects…[is] precisely the type of 'controversial' action for which an EIS must be prepared.")

The BIA erred in failing to prepare an EIS for a project where substantial questions have been raised as to its potential impacts, and where there is clearly controversy regarding the project's potential impacts. Because the BIA failed to comply with NEPA, the BIA cannot make the required finding to approve the Camp 4 fee-to-trust application pursuant to 25 C.F.R. § 151.10(h).

1. Conversion of Such a Large Amount of Agricultural Land at a Bare Minimum Raises a Substantial Question as to Impacts to Agricultural Resources.

Because the proposed project under either alternative would convert approximately 1,227 acres of the property—almost 86%—from an agricultural land use designation to non-agricultural designations, the project clearly results in significant impacts to agriculture. The removal of so many acres of land from agriculture, which conflicts with the Santa Barbara Comprehensive Plan and the Santa Ynez Valley Community Plan ("SYVCP"), both of which protect agriculture, is significant both in context and intensity. The removal of this many acres of land from agriculture, in a region characterized by important statewide, regional and local agricultural resources, is significant in context. Further, agricultural resources on the Camp 4 Property constitute a unique geographical characteristic, potential degradation of which must be fully evaluated through an EIS. *See Sierra Club, supra*, 843 F.2d at 1193 ("The standard to determine if an action will significantly affect the quality of the human environment is whether '…the proposed project *may* significantly degrade some human environmental factor.'") (emphasis in original) (internal quotations and citations omitted).

2. Numerous Substantial Questions have been Raised Concerning Potentially Significant Impacts to Biological Resources, Warranting an EIS to Fully Evaluate these Potential Impacts.

The Alliance and others raised numerous substantial questions as to the potential for significant biological impacts of the proposed project. The following issues were raised in depth in the Alliance's comment letter, which *at a minimum* raise substantial questions as to potential significant impacts to biological resources, warranting development of an EIS: (1) impacts to wildlife corridor movements due to impacts that span the project site and due to inappropriate identification of a corridor as a degraded stream channel[5]; (2) impacts to state-

[5]AR0195.00175, AR0195.00184.

protected birds due to the complete failure to address potential impacts to state-listed species, despite evidence submitted that some species are, or may be, present on the project site[6]; (3) inadequate mitigation for impacts to nesting and roosting birds, including federally-regulated bald eagles, golden eagles and mountain plovers, due to incomplete surveying[7]; (4) impacts to oak trees individually due to inadequate protective measures[8]; (5) impacts to oak savannah habitat (oak trees in large concentrations, constituting a unique habitat) due to inappropriate mapping of such habitat in only part of the project site[9]; (6) failure to address the impacts of night lighting on the property to wildlife on adjacent areas[10]; (7) impacts caused by potential underestimation of species in biological assessment studies, due to botanical surveys being done in below-average rainy seasons[11]; (8) impacts caused by the inappropriately narrow definition of "wetland," resulting in areas which would otherwise be identified and protected as wetlands by the County or other agencies not being so identified[12]; and (9) impacts caused by the failure to require buffers around wetlands that would protect those wetlands from damage caused by development.[13]

The potential for biological impacts raised by the Alliance and its consulting biologist clearly demonstrate that a more complete evaluation of the potential impacts of the proposed project in an EIS is required. When such evidence is raised, an EIS must be prepared. *See Sierra Club, supra*, 843 F.2d at 1193 (holding that an EIS was required where organization demonstrated that timber sales "*may* significantly degrade some human environmental factor" by providing

[6]AR0195.00177-78.
[7]AR0195.00175.
[8]AR0195.00176.
[9]AR0195.00176, AR0195.00178.
[10]AR0195.00176.
[11]AR0195.00175.
[12]AR0195.00178.
[13]AR0195.00179.

"testimony of conservationists, biologists, and other experts who were highly critical of the EAs and disputed the Forest Service's conclusion that there would be no significant effects from logging") (emphasis added). Likewise here, the comments on the Draft and Final EAs are replete with assertions criticizing the conclusions of the BIA and providing evidence that *at a bare minimum* raises substantial questions as to potentially significant impacts to biological resources.

3. Substantial Questions have been Raised Concerning the Proposed Project's Potentially Significant Cumulative Impacts, Warranting an EIS to Fully Evaluate these Potential Impacts.

The Alliance and others have raised numerous substantial questions as to potentially significant cumulative impacts of the proposed project. As with all the other substantial questions discussed in this appeal, an EIS is required in order to fully evaluate these potentially significant cumulative impacts:

1. Cumulative impacts of the proposed project with other development on nearby tribal land, including (1) a 6.9-acre property owned by the Chumash Tribe which was recently taken into trust; (2) expanded development on the Chumash Tribe's existing reservation, including a major expansion to the casino and hotel, anticipated to bring in an additional 1,200 visitors daily[14], and (3) the potential for other reasonably foreseeable development on the reservation, including for example, redevelopment of existing tribal housing that may no longer be needed for housing after development of the new housing identified in the proposed project.[15]

2. Cumulative impacts of the proposed project and impacts of possible renewal of the TCA Plan.[16]

3. Cumulative impacts of the direct conversion of agricultural land of the proposed project combined with the potential for the indirect effect of encouraging conversion of other local agricultural land.[17]

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[14] The proposed additions include up to 215 new hotel guest rooms; addition of 584 parking spaces; and expansion of the casino. *See* Exhibit A– July 2014 *Environmental Evaluation – Santa Ynez Band of Chumash Indians Hotel Expansion Project* at page 1-1.

[15] AR0195.00186- AR0195.00187.

[16] As described above (page 2) the Chumash Tribe already obtained approval in 2013 of its TCA Plan, identifying 11,500 acres for acquisition within the Santa Ynez Valley. The Plan was only withdrawn "without prejudice," meaning that it could be potentially reinstated at any time. AR0195.00186.

NEPA requires agencies to identify such potential future projects and analyze the cumulative impacts of those projects in conjunction with the proposed project. *See Te-Moak Tribe of W. Shoshone of Nevada v. U.S. Dep't of Interior* (9th Cir. 2010) 608 F.3d 592, 602 (An EA must "fully address cumulative environmental effects or 'cumulative impacts.'"). *See also Klamath-Siskiyou Wildlands Ctr. v. Bureau of Land Mgmt.* (9th Cir. 2004) 387 F.3d 989, 993, 995 (holding that EAs for two timber sales were inadequate, where agency did not analyze "incremental impact[s]" or how individual impacts "might combine or synergistically interact with each other," stating that "proper consideration of the cumulative impacts of a project requires "'some quantified or detailed information; ... [g]eneral statements about possible effects and some risk do not constitute a hard look...'"). Not only did the BIA fail to identify potential future projects as it was required to do under NEPA, there have at a minimum been substantial questions raised as to the potential for cumulative impacts, which must be fully addressed in an EIS.

4. An EIS is required because Substantial Questions have been Raised as to the Ability of the Proposed Mitigation Measures to Reduce Impacts to Below a Level of Significance.

The Alliance and others commented on the inadequacy of proposed mitigation measures to actually reduce project impacts. Because there are substantial questions as to the efficacy of the proposed mitigation measures for the project, BIA inappropriately issued a FONSI.

An EIS is required when a project's proposed mitigation measures insufficiently reduce the impacts of the project. *Wild Sheep, supra,* 681 F.2d at 1182 (mitigation measures in an EA were insufficient to avoid preparation of an EIS where substantial questions were raised as to the efficacy of the measures in

[17] AR0195.00185- AR0195.00186.

mitigating harm and reducing the impacts of the project to below a level of significance). In *Wild Sheep*, the court held that because the Forest Service "received numerous responses from conservationists, biologists, and other knowledgeable individuals, all highly critical of the EA and all disputing the EA's conclusion that [the project] would have no significant effect[s,]" and because "the efficacy of [the proposed] mitigation measures was severely attacked by numerous responses to the original draft of the EA," an EIS was required. *Id*. at 1180, 1182.

Likewise in this case, numerous commenters have raised concerns that proposed mitigation measures are insufficient to reduce the impacts of the project to below a level of significance. The following are issues raised by the Alliance: (1) mitigation measures for impacts to oak trees are insufficient due to inadequate consideration of the constituents of oak savannah habitat and a failure to consider genetic integrity in replanting schemes, resulting in still-significant impacts to oak trees and oak savannah habitat[18]; (2) mitigation measures aimed at addressing impacts to "Waters of the United States" are insufficient because they do not address impacts to all types of wetlands[19]; (3) a mitigation measure of possibly changing the project scope and location of housing developments due to potential impacts to Vernal Pool Fairy Shrimp ("VPFS") is inappropriately delayed and unspecified based on future determinations by the U.S. Fish and Wildlife Service of the location of VPFS critical habitat[20]; and (4) the project's inappropriate reliance on County mitigation measures to protect sensitive habitats supporting locally rare species, which the Final EA claims in other places will no longer apply after the fee-to-trust transfer due to the project site no longer being under County jurisdiction.[21]

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[18]AR0195.00179- AR0195.00180.
[19]AR0195.00180-AR0195.00181.
[20]AR0195.00176.
[21]AR0195.00179.

B. The Final EA is Inadequate to Support a FONSI.

In addition to the fact that substantial questions have been raised as to the potential impacts of the proposed project, alone warranting development of an EIS, the EA itself is inadequate to support a FONSI. Specifically, the Final EA (1) fails to analyze conflicts with existing land use and environmental protection policies, (2) fails to adequately analyze cumulative impacts, and (3) has an insufficient range of alternatives. Because the environmental review for the project is inadequate and fails to comply with NEPA, the BIA cannot make the required finding to approve the FTT application pursuant to 25 C.F.R. § 151.10(h).

1. The Analysis of Impacts is Flawed Because it Fails to Analyze Conflicts with Existing Land Use and Environmental Protection Laws and Policies, in Violation of NEPA.

Under NEPA, an EA must accurately describe the affected environment, including the existing physical environment, and existing land use designations and policies. 40 C.F.R. § 1502.15. This description provides the necessary baseline from which to determine the environmental consequences of the project. Although the Final EA lists some of the existing land use designations and policies, the Final EA fails to adequately identify the significant impacts of the project caused by potential or actual conflicts with those existing land use designations and policies, as required by NEPA. *See* 40 C.F.R. § 1502.16(c) (environmental consequences analysis includes an analysis of "[p]ossible conflicts between the proposed action and the objectives of Federal, regional, State, and local (and in the case of a reservation, Indian tribe) land use plans, policies and controls for the area concerned.").[22] As described in detail below, the Final EA fails to adequately analyze conflicts with local land use policies designed for protection of agricultural

[22] *See also* Exhibit B – Indian Affairs NEPA Guidebook, Appendix 17 at 15-16, discussed *infra*.

and biological resources, relying simply on the *future* change in jurisdiction to claim there are no conflicts with these policies.

The Final EA erroneously claims that there would only be conflicts if the project resulted in local agencies being unable to enforce their own policies.[23] While in some instances, an EA must analyze impacts outside the project's boundaries,[24] analysis of the project's conflicts with local policies and ordinances is a distinct requirement under NEPA, entirely separate from an analysis of project's impact on a local government's ability to apply those policies and ordinances on parcels outside the project boundaries.

The Final EA is fundamentally flawed in skirting this analysis by presupposing approval of the underlying project (i.e., the land will be in trust status), and using that status as the baseline for impacts analysis. This approach was rejected in *N. Plains Res. Council, Inc. v. Surface Transp. Bd.* (9th Cir. 2011) 668 F.3d 1067, 1084–85 (holding that evaluating impacts based on future changes, such as mitigation measures, as opposed to evaluating impacts based on the *existing* environmental setting "presupposes approval," and is therefore inappropriate under NEPA, and noting that, "NEPA obligations to determine the projected extent of the environmental harm to enumerated resources *before* a project is approved.") (emphasis original). *See also Half Moon Bay Fishermans' Mktg. Ass'n v. Carlucci:*

> 'NEPA clearly requires that consideration of environmental impacts of proposed projects take place *before* [a final decision] is made.' [CITATION]. *Once a project begins, the 'pre-project environment' becomes a thing of the past, thereby making evaluation of the project's effect on pre-project resources impossible. Id.* Without establishing the baseline conditions which exist… there is simply no way to determine what effect the proposed [project]… will have on the environment and, consequently, no way to comply with NEPA.

[23] AR0194.00140.

[24] For example, biological resource policies that would span the proposed project site and lands outside the project site, cumulative impacts, etc.

857 F.2d 505, 510 (9th Cir. 1988) (emphasis added). *See also LaFlamme v. F.E.R.C.*, 852 F.2d 389, 400 (9th Cir. 1988) ("NEPA clearly requires that consideration of the environmental impacts of proposed projects take place *before* any [] decision is made. '[T]he very purpose of NEPA's requirement that an EIS be prepared…is to obviate the need for speculation by insuring that available data is gathered and analyzed prior to the implementation of the proposed action'") (emphasis in original).

The Final EA also fails to adequately analyze whether the project might threaten violation of local laws imposed for the protection of the environment. *See Sierra Club, supra*, 843 F.2d at 1193 ("CEQ regulations outline factors that an agency *must consider* in determining whether an action 'significantly' affects the environment… [t]hese factors include, inter alia… '[w]hether the action *threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment*,' 40 C.F.R. § 1508.27(b)(10).") (emphasis added). In *Sierra Club*, the court held that the Forest Service's decision not to prepare an EIS was unreasonable and EAs prepared for timber sales were inadequate. The EAs were inadequate in part because of their failure to address how the project might have violated *state* water quality standards.

> Nowhere do the EAs mention the impact of logging upon *California's water quality standards*. Because substantial questions have been raised concerning the potential adverse effects of harvesting these timber sales, an EIS should have been prepared. [CITATION]. The Forest Service's decision not to do so was unreasonable. Id. at 1177. It failed to account for factors necessary to determine whether significant impacts would occur. Therefore, its decision was not "fully informed and well-considered." [CITATIONS].

843 F.2d at 1195 (emphasis added). As in *Sierra Club*, the BIA's failure to adequately analyze whether the proposed project might violate local requirements imposed for the protection of the environment makes the EA inadequate.

The following are examples, which the Alliance raised, of how the project does, or could potentially, conflict with local land use policies, and how it might violate local requirements imposed for the protection of the environment.

a. The Analysis of Impacts to Agricultural Resources is Insufficient and Fails to Address Conflicts with Existing Land Use Policies Addressing Agricultural Preservation.

In addition to the significance of removing so much agriculture in this context and at this intensity, the removal of the majority of the Camp 4 property from an agricultural land use designation conflicts with the Santa Barbara Comprehensive Plan and the SYVCP, both of which protect agriculture. These conflicts, in and of themselves, make the conversion a significant impact that needs to be analyzed fully in an EIS. For instance, the Comprehensive Plan Land Use Element policies conclude that:

> In rural areas, cultivated agriculture shall be preserved and where conditions allow, expansion and intensification should be supported. Lands with both prime and non-prime soils shall be reserved for agricultural uses.[25]

The SYVCP also specifically states that "[l]and designated for agriculture within the Santa Ynez Valley *shall be preserved and protected for agricultural use*."[26]

The Final EA fails to address the proposed project's direct conflicts with these existing land use policies. The Final EA correctly points out that the entire project site is currently zoned Agricultural II (AG-II-100) and that "[d]evelopment of tribal housing on the 1,433-acre property *would not be consistent with the allowed land uses under the AG-II-100 zoning and the AC land use designation identified by the Santa Barbara Comprehensive Plan* if it remained in the jurisdiction of the County[.]"[27] The Final EA does not, however, *analyze* these conflicts as significant impacts, instead claiming that "adverse impacts to land use

[25] *See* Exhibit C – Santa Ynez Valley Community Plan at page 8, *citing Santa Barbara County Comprehensive Plan, Land Use Element.*
[26] *Id.* at 73 (Policy LUA-SYV-2) (emphasis added).
[27] AR0127.00133 (emphasis added), AR0194.01836.

would result if an incompatible land use within the project parcels would result in the inability of the County to continue to implement existing land use policies *outside of the project boundaries.*"[28]

Although it is accurate that after the trust acquisition, the project parcels would be exempt from County land use regulations, an EIS should nonetheless be developed that analyzes the significant impacts of the proposed project based on *existing* land use plans and policies. *See* Exhibit B, Appendix 17 at pages 15-16 (emphasis added):

> Conflicts of Federal Proposal With Land Use Plans, Policies or Controls. How should an agency handle potential conflicts between a proposal and the objectives of Federal, state or local land use plans, policies and controls for the area concerned?... The agency should first inquire of other agencies whether there are any potential conflicts. *If there would be immediate conflicts*, or if conflicts could arise in the future when the plans are finished (see Question 23(b) below), *the EIS must acknowledge and describe the extent of those conflicts*.

By failing to address actual conflicts, and relying on the change in land use jurisdiction that would occur *after the project's approval*, the Final EA failed to adequately inform the public of the full impacts of the proposed project. As in *N. Plains*, where the agency erroneously failed to look at the impacts of the proposed project by relying on future mitigation measures addressing those impacts, the Final EA also relied on future changes, in this case changes in land use jurisdiction, as an excuse for not looking at the on the ground impacts that will occur as a result of the project. This does not satisfy NEPA's requirements to address "immediate" potential conflicts with local land use ordinances and policies, as well as the requirement to assess the potential impacts of a project in comparison to the "existing" environmental setting. *See Half Moon Bay*, *supra*.

[28] AR0194.00140 (emphasis added).

b. The Analysis of Impacts to Biological Resources is Insufficient and Fails to Address Conflicts with Existing Policies Addressing Biological Resources Preservation.

Just as the BIA relies on future changes in land use designation to skirt analysis of potential conflicts with existing land use policies, the BIA also fails to adequately address conflicts with existing policies to protect biological resources:

1. The EA fails to address or analyze potential impacts of the proposed project to species listed under the California Endangered Species Act ("CESA" – Cal. Fish & Game Code § 2050 *et seq.*) as rare, threatened or endangered. Nor does the EA address the potential impacts of the proposed project on species recognized as "Species of Special Concern" by the California Department of Fish and Wildlife.[29]
2. The EA fails to address or analyze potential impacts of the proposed project on oak trees and oak savanna habitat caused by conflicts with existing oak tree protection policies.[30]
3. Numerous other actual conflicts or potential conflicts with local policies imposed for the protection of biological resources were identified in the Alliance's comments on the Final EA.[31]

BIA's failure to address the project's numerous potential or actual conflicts with existing state and local laws or policies runs directly counter to NEPA's mandate to assess these factors in determining whether the proposed project will significantly affect the environment. *Sierra Club, supra*, 843 F.2d at 1193. The failure to analyze these potential conflicts in the Final EA simply does not provide enough information to fully determine what the potential impacts of the project will be. An EIS should have been developed that fully analyzed these potential conflicts, thereby informing both the public and BIA as to the full extent of the potential impacts of the project. The failure of BIA to develop an EIS to fully analyze these potentially significant impacts precludes the BIA from making a

[29] AR0195.00177- AR0195.00178.
[30] AR0195.00178.
[31] AR0195.00198-AR0195.00205.

finding under 25 C.F.R. § 151.10(h) that the environmental review for the project complies with NEPA.

2. The Analysis of Cumulative Impacts is Insufficient.

The EA failed to analyze potentially significant cumulative impacts of the proposed project as required by NEPA. *See Native Ecosystems Council v. Dombeck* (9th Cir. 2002) 304 F.3d 886, 896 ("The importance of ensuring that EAs consider the additive effect of many incremental environmental encroachments is clear. '[I]n a typical year, 45,000 EAs are prepared compared to 450 EISs.... Given that so many more EAs are prepared than EISs, *adequate consideration of cumulative effects requires that EAs address them fully.*'[CITATIONS]") (emphasis in original). *See also Te-Moak, supra*, 608 F.3d at 602 (An EA must "fully address cumulative environmental effects or 'cumulative impacts.'").

First, the EA failed to identify and analyze potentially cumulative impacts caused by impacts of the proposed project and other reasonably foreseeable future actions, as it is required to do under NEPA. *See Native Ecosystems, supra,* 304 F.3d at 895-96 ("Given that so many more EAs are prepared than EISs, adequate consideration of cumulative effects requires that EAs address them fully. [CITATIONS]…without a consideration of individually minor but cumulatively significant effects 'it would be easy to underestimate the cumulative impacts of [a project]..., and of other reasonably foreseeable future actions, on the [environment].' [CITATIONS].") The agency has the burden of identifying and analyzing potential future projects that warrant a cumulative effects analysis. *See Te-Moak Tribe, supra,* 608 F.3d at 605 (holding that the burden is on the agency to identify cumulative impacts, stating that Plaintiffs "need not show what cumulative impacts would occur. *To hold otherwise would require the public, rather than the agency, to ascertain the cumulative effects of a proposed action*… Such a requirement would thwart one of the 'twin aims' of NEPA-to 'ensure [ ] that the

agency will inform the public that it has indeed considered environmental concerns in its decisionmaking process.' [CITATIONS]…Instead, we conclude that *Plaintiffs must show only the potential for cumulative impact.*") (emphasis added). Accordingly, BIA should have identified cumulative impacts, which it failed to do.

Moreover, even when presented with substantial questions regarding numerous potential cumulative impacts, BIA failed to adequately analyze those potential impacts in the EA. There is no analysis of potential cumulative impacts associated with (1) the expanded Chumash Hotel and Casino on the Chumash Reservation; (2) another Chumash Tribe-owned property that was recently taken into trust, on which a museum, park, cultural center and offices are planned[32]; or (3) potential renewal of the TCA Plan, described above.[33] Under NEPA, there need not be a finalized project in order to trigger the requirement to address cumulative impacts, let alone a project that was already approved. *See Native Ecosystems, supra,* 304 F.3d at 895-96. *See N. Plains, supra* 668 F.3d at 1078–79. *See also Te-Moak, supra,* 608 F.3d at 607 (holding that an EA's cumulative impacts analysis was inadequate for failing to adequately address the cultural impacts of *reasonably foreseeable* mining activities in the cumulative effects area) (emphasis added).

Likewise, the Final EA also failed to analyze the potential for cumulative impacts caused by the proposed project's indirect impacts on other local agricultural resources. *See, e.g., TOMAC v. Norton* (D.D.C. 2003) 240 F. Supp. 2d 45, 50, *aff'd sub nom. TOMAC, Taxpayers of Michigan Against Casinos v. Norton*

[32] *Preservation of Los Olivos and Preservation of Santa Ynez v. Pacific Regional Director, Bureau of Indian Affairs,* 58 IBIA 278 (2014).

[33] Reinstatement of the TCA Plan is an exceedingly foreseeable possibility that warrants much greater review in light of the potential cumulative impacts of the proposed project combined with the TCA Plan. The fact that the TCA Plan was *already approved* and withdrawn without prejudice makes it much less speculative that it could be reinstated, warranting consideration of the cumulative impacts of the two projects together.

(D.C. Cir. 2006) 433 F.3d 852 (BIA EA for casino development was held inadequate for failing to take the requisite NEPA "hard look" at potential impacts of casino upon *growth and development of local community,* noting "[s]everal courts have struck down FONSI decisions where agencies failed to evaluate the growth-inducing effects of major federal projects in small communities."). Likewise here, the conversion of a large area of land, especially in such a prominent location, from agricultural use to residential and other uses can result in indirect impacts to the rural and agricultural character of the community (e.g., growth-inducing impacts, economic pressure on other local agricultural properties to convert to non-agricultural uses). *See* 40 C.F.R. § 1508.8 ("[indirect impacts] are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include *growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate*…") (emphasis added). The EA should have addressed the potential cumulative impacts of this agricultural land conversion and the indirect effects it may cause.

3. The Analysis of Alternatives is Inadequate Because the Final EA Failed to Include a Reasonable Range of Alternatives.

A fundamental problem with the Final EA is that it does not analyze a reasonable range of alternatives. *See Klamath-Siskiyou Wildlands Ctr. v. U.S. Forest Serv.* (E.D. Cal. 2004) 373 F. Supp. 2d 1069, 1088 ("NEPA mandates that an agency consider and discuss the range of all reasonable alternatives to the proposed action…"). 42 U.S.C. § 4332(2)(E); 40 C.F.R. § 1508.9(b). The purpose of this requirement is to identify alternatives "that will avoid or minimize adverse effects of [] actions upon the quality of the human environment." 40 C.F.R. § 1500.2(e).

The EA fails to meet this essential objective because it: (1) unreasonably narrowed the purpose of the proposed project, and (2) included two alternatives that have exactly the same impact on agricultural and other resources.

First, while an agency is not required to analyze alternatives that do not meet the purpose and need of the project, "[n]or, however, can the agency narrowly define its purpose and need so as to winnow down the alternatives until only the desired one survives." *Klamath-Siskiyou, supra,* 373 F. Supp. 2d at 1088. The BIA has done exactly this, foreshortening the available alternatives for the project by inaccurately claiming that the primary purpose of the proposed project—to provide tribal housing—can in no way be accomplished without the fee-to-trust transfer.[34] The Final EA fails to analyze alternatives that would accomplish residential development without a fee-to-trust transfer, e.g., housing allowed under existing County jurisdiction[35], the possibility of pursuing County processes for rezoning parts of the property that would allow for greater development than is currently allowed, and development or re-development of housing on other existing Chumash Tribe land, including the Chumash reservation.[36]

The range of alternatives is also inadequate due to the fact that the impacts to agricultural resources are the same for both Alternatives A and B. One of the major impacts of the proposed project is the conversion of 1411.1 acres from agriculturally zoned land to largely non-agricultural land. In *Klamath-Siskiyou*, the court rejected as inadequate an EA that only analyzed two alternatives besides the no-action alternative for a timber harvest and watershed improvement project. The

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[34] "[T]he only reasonable alternatives are to either take no action or take the requested parcels into trust on behalf of the Tribe to alleviate the existing shortage of developable land and associated housing on the Tribe's Reservation" AR0194.00017.

[35] *See* Exhibit D at page 2-18 – Santa Barbara County Land Use Development Code § 35.21.050. Under existing zoning, the parcels could be developed with "1 one-family dwelling per lot; plus agricultural employee housing, residential agricultural units, and second units, where allowed…"

[36] AR0195.00173-174.

two alternatives were "nearly identical" and the agency failed to analyze an alternative that would have reduced the amount of timber harvest. 373 F. Supp. 2d at 1088. Likewise here, although Alternatives 1 and 2 vary somewhat in layout and density of development, the impacts on agricultural land are the same—in both Alternatives, only 206 acres of the original 1411.1 acres, a mere 14%—would remain designated for agriculture.[37]

This narrow range of alternatives fails to satisfy NEPA's requirement that a reasonable range of alternatives be analyzed, or that alternatives be identified that avoid or minimize the project's adverse effects. Based on impacts to agriculture and other significant impacts of the proposed project, the BIA should have included additional alternatives that would analyze the possibility of obtaining the project objectives: (1) without a fee-to-trust transfer and (2) with less impact to agricultural resources (e.g., through reduction, or clustering of housing development, off-site housing, etc.). *See W. Watersheds Project v. Abbey* (9th Cir. 2013) 719 F.3d 1035, 1050–53 (emphasis added):

> [T]he action alternatives each considered issuing a new grazing permit *at the same grazing level as the previous permit*…we do question how an agency can make an informed decision on a project's environmental impacts when each alternative considered would authorize the same underlying action… the EA process for the [allotment] was deficient in its consideration of alternatives *insofar as it did not consider in detail any alternative that would have reduced grazing levels*.

Likewise here, the EA fails to consider how the proposed need for the project—tribal housing—can be met in any way other than a fee-to-trust transfer and in any way that reduces impacts to agricultural and other resources. This does not satisfy NEPA's requirements to analyze a reasonable range of alternatives.

In summary, because the environmental review for the project was entirely inadequate for multiple reasons, the BIA could not lawfully determine pursuant to

[37] AR0194.00020, AR0194.00029.

25 C.F.R. § 151.10(h) that the proposed project in the Camp 4 FTT application complies with NEPA. The BIA's therefore decision must be vacated and remanded.

II. BIA Failed to Adequately Consider whether the Project would Create Potential Conflicts of Land Use.

Under 25 CFR § 151.10(f), BIA is charged with considering "potential conflicts of land use," which it has failed to do. The proposed project would dramatically change the existing land use on the Camp 4 Property. As discussed above, the current zoning is AG-II-100, which requires a minimum parcel size of 100 acres, with one one-family residential dwelling unit allowed per parcel.[38] The areas surrounding the Camp 4 Property are likewise rural and agricultural. The proposed project—consisting of 143 homes in addition to other facilities and infrastructure—would increase development by at least ten times that which is currently allowed under the County's land use policies.

Despite this, the NOD cursorily states that the intended purposes of the project, "tribal housing, land consolidation, and land banking are not inconsistent with the surrounding uses." AR0123.00022. This statement is simply incorrect. The NOD fails to discuss, for example, how the amount of housing, density of housing, required roads and infrastructure, parking facilities, etc. compare in scale and density to the surrounding rural area. The NOD simply parrots the submitted application, not evincing any evidence of analysis beyond the unsubstantiated claims in the application[39]:

> There should be no adverse jurisdictional impacts to the County because the Tribe's intended purposes of tribal housing, land consolidation and land banking are not inconsistent with the surrounding uses. As such, the County will not have any additional impacts of trying to coordinate incompatible uses.

[38] *See* Exhibit D at page 2-18.
[39] Camp 4 Fee-to-Trust Application, AR0032.00012.

Nothing in the Administrative Record demonstrates that this factor, or these claims made in the application were given adequate consideration or analysis by BIA.

This acquisition is unlike land acquisitions where the proposed use of the property is similar to or the same as the existing (i.e., pre-trust status) use. *See e.g., Cnty. of Charles Mix v. U.S. Dep't of Interior* (8th Cir. 2012) 674 F.3d 898, 904 (upholding BIA's determination under 25 CFR § 151.10(f) that there would not be land use conflicts where "the tribe's usage of the [property] *would not change* after it was placed in trust.") (emphasis added). Unlike in *Charles Mix*, the use of the Camp 4 Property will change dramatically, and in sharp contrast to the surrounding land. BIA has provided an entirely inadequate analysis of this land use conflict.

III. BIA Failed to Give Heightened Consideration to the Local Jurisdiction's Concerns, Given the Off-Reservation Location of the Land.

When making a determination on a fee-to-trust application for land that is not contiguous to the applicant tribe's existing reservation, BIA is required to: (1) "give greater scrutiny to the tribe's justification of anticipated benefits from the acquisition" and (2) consider to a greater extent the concerns raised by local jurisdictions regarding the acquisition. 25 C.F.R. § 151.11. *City of Roseville v. Norton* (D.C. Cir. 2003) 348 F.3d 1020, 1023 (holding that "the Secretary *must balance* the need of a tribe for additional land, the use to which the land will be put, and the distance of the land from the tribe's reservation, before exercising discretion to take new land into trust for Indians.") (emphasis added). Based on the Record, BIA failed to even address the two issues it was required to address under 25 C.F.R. § 151.11, let alone give greater scrutiny to them.

The NOD describes the location of the property relative to state boundaries and simply states that it is "a mere 1.6 miles from the Reservation[,]"[40] again

[40] AR0123.00024.

simply copying verbatim the Tribe's application language with no further analysis.[41] By downplaying the distance between the property and the reservation, and by failing to undergo the requisite scrutinizing and balancing required by 25 C.F.R. § 151.11, the BIA in essence treats the property as if it is on or contiguous to the reservation.

The property is not on the reservation or contiguous to the reservation, however, and the regulations clearly mandate additional factors to consider, and scrutiny to undertake in that instance, which BIA has entirely failed to do. *See* 60 FR 32874-01 (June 23, 1995) ("This final rule modifies three existing sections within Part 151 (Land Acquisitions) and *creates a new section which contains additional criteria and requirements…when lands are outside and noncontiguous to the tribes' existing reservation boundaries*) (emphasis added). Nothing in the Record demonstrates that BIA sufficiently analyzed this regulatory requirement and its failure to do so is an improper exercise of its discretion.

CONCLUSION

The BIA's decision to accept the Camp 4 property into trust pursuant to 25 C.F.R. § 151.10 *et seq.* was in error and should be overturned and vacated in its entirety, based on the failure to adequately address the required regulatory factors and based on its reliance on an inadequate environmental review.

[41] The Camp 4 Fee-toTrust Application states that "the property is adjacent to Highway 154 and is a mere 1.6 miles from the Reservation." AR0032.00005.

Respectfully submitted this 15th day of December, 2015.

/S/ Linda Krop

Linda Krop

/S/ Nicole Di Camillo

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SANTA YNEZ VALLEY ALLIANCE

EXHIBIT A

ENVIRONMENTAL EVALUATION

SANTA YNEZ BAND OF CHUMASH INDIANS
HOTEL EXPANSION PROJECT

JULY 2014

LEAD AGENCY:

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ENVIRONMENTAL EVALUATION

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CHUMASH HOTEL EXPANSION PROJECT
ENVIRONMENTAL EVALUATION

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INTRODUCTION

1.1 INTRODUCTION

The Santa Ynez Band of Chumash Indians (Tribe) proposes to expand the hotel and expand/modify portions of the Chumash Casino Resort located on Reservation lands in Santa Barbara County, California (Proposed Project). The regional location of the Proposed Project site is shown in **Figure 1-1**, and a site and vicinity topographical map is shown in **Figure 1-2**. The Proposed Project will be constructed in a single phase and will involve the activities described below:

- Addition of up to 215 new hotel guest rooms;
- Addition of 584 parking spaces;
- Expansion of the casino area to ease existing overcrowding; and
- Renovation of the existing casino and hotel to address overcrowding and circulation issues.

The Tribal-State Gaming Compact (Compact) required that the Tribe adopt an environmental ordinance providing for the preparation, circulation, and consideration by the Tribe of environmental reports concerning potential off-Reservation environmental impacts of gaming-related Projects to be commenced on or after the effective date of the Compact. In addition, according to the Compact the Tribe shall:

- "Make a good faith effort to incorporate the policies and purposes of the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA) consistent with the Tribe's governmental interests."
- "Consult" with local jurisdictions (cities and counties), and if requested, "meet with them to discuss mitigation of significant adverse off-Reservation environmental impacts."
- Make "good faith" efforts to mitigate off-Reservation impacts.

The Tribe enacted Ordinance No 4 "Off-Reservation Environmental Impacts" (Ordinance) in accordance with the Compact. The Ordinance establishes the mechanisms to comply with the Compact by providing procedures for the preparation, circulation, and consideration by the Tribe of environmental reports concerning potential off-Reservation environment impacts of on-Reservation Projects. In accordance with the Compact, the term "Project" is defined as "the commencement, on or after the effective date of the Tribal-State Gaming Compact, of any expansion or any significant renovation or modification of any existing gaming facility or any significant excavation, construction, or development associated with the

EXHIBIT B

INDIAN AFFAIRS
NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) GUIDEBOOK

59 IAM 3-H

DIVISION OF ENVIRONMENTAL AND CULTURAL RESOURCES MANAGEMENT

AUGUST 2012

Office of the Assistant Secretary - Indian Affairs
Office of Facilities, Environmental and Cultural Resources
Division of Environmental and Cultural Resources Management
12220 Sunrise Valley Drive
Reston VA 20191

Release #12-32; replaces 2005 version

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NEPA'S FORTY MOST ASKED QUESTIONS

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reasonable functional separation of the documents: the EIS contains information relevant to the choice among alternatives; the plan is a detailed description of proposed management activities suitable for use by the land managers. This procedure provides for concurrent compliance with the public review requirements of both NEPA and the National Forest Management Act.

Under some circumstances, a project report or management plan may be totally merged with the EIS, and the one document labeled as both "EIS" and "management plan" or "project report." This may be reasonable where the documents are short, or where the EIS format and the regulations for clear, analytical EISs also satisfy the requirements for a project report.

22. State and Federal Agencies as Joint Lead Agencies. May state and federal agencies serve as joint lead agencies? If so, how do they resolve law, policy and resource conflicts under NEPA and the relevant state environmental policy act? How do they resolve differences in perspective where, for example, national and local needs may differ?

A. Under Section 1501.5(b), federal, state or local agencies, as long as they include at least one federal agency, may act as joint lead agencies to prepare an EIS. Section 1506.2 also strongly urges state and local agencies and the relevant federal agencies to cooperate fully with each other. This should cover joint research and studies, planning activities, public hearings, environmental assessments and the preparation of joint EISs under NEPA and the relevant "little NEPA" state laws, so that one document will satisfy both laws.

The regulations also recognize that certain inconsistencies may exist between the proposed federal action and any approved state or local plan or law. The joint document should discuss the extent to which the federal agency would reconcile its proposed action with such plan or law. Section 1506.2(d). (See Question 23).

Because there may be differences in perspective as well as conflicts among [46 FR 18033] federal, state and local goals for resources management, the Council has advised participating agencies to adopt a flexible, cooperative approach. The joint EIS should reflect all of their interests and missions, clearly identified as such. The final document would then indicate how state and local interests have been accommodated, or would identify conflicts in goals (e.g., how a hydroelectric project, which might induce second home development, would require new land use controls). The EIS must contain a complete discussion of scope and purpose of the proposal, alternatives, and impacts so that the discussion is adequate to meet the needs of local, state and federal decisionmakers.

23a. Conflicts of Federal Proposal With Land Use Plans, Policies or Controls. How should an agency handle potential conflicts between a proposal and the objectives of Federal, state or local land use plans, policies and controls for the area concerned? See Sec. 1502.16(c).

A. The agency should first inquire of other agencies whether there are any potential conflicts. If there would be immediate conflicts, or if conflicts could arise in the future when the plans are finished (see Question 23(b) below), the EIS must acknowledge and describe the extent

of those conflicts. If there are any possibilities of resolving the conflicts, these should be explained as well. The EIS should also evaluate the seriousness of the impact of the proposal on the land use plans and policies, and whether, or how much, the proposal will impair the effectiveness of land use control mechanisms for the area. Comments from officials of the affected area should be solicited early and should be carefully acknowledged and answered in the EIS.

23b. What constitutes a "land use plan or policy" for purposes of this discussion?

A. The term "land use plans," includes all types of formally adopted documents for land use planning, zoning and related regulatory requirements. Local general plans are included, even though they are subject to future change. Proposed plans should also be addressed if they have been formally proposed by the appropriate government body in a written form, and are being actively pursued by officials of the jurisdiction. Staged plans, which must go through phases of development such as the Water Resources Council's Level A, B and C planning process should also be included even though they are incomplete.

The term "policies" includes formally adopted statements of land use policy as embodied in laws or regulations. It also includes proposals for action such as the initiation of a planning process, or a formally adopted policy statement of the local, regional or state executive branch, even if it has not yet been formally adopted by the local, regional or state legislative body.

23c. What options are available for the decisionmaker when conflicts with such plans or policies are identified?

A. After identifying any potential land use conflicts, the decisionmaker must weigh the significance of the conflicts, among all the other environmental and non-environmental factors that must be considered in reaching a rational and balanced decision. Unless precluded by other law from causing or contributing to any inconsistency with the land use plans, policies or controls, the decisionmaker retains the authority to go forward with the proposal, despite the potential conflict. In the Record of Decision, the decisionmaker must explain what the decision was, how it was made, and what mitigation measures are being imposed to lessen adverse environmental impacts of the proposal, among the other requirements of Section 1505.2. This provision would require the decisionmaker to explain any decision to override land use plans, policies or controls for the area.

24a. Environmental Impact Statements on Policies, Plans or Programs. When are EISs required on policies, plans or programs?

A. An EIS must be prepared if an agency proposes to implement a specific policy, to adopt a plan for a group of related actions, or to implement a specific statutory program or executive directive. Section 1508.18. In addition, the adoption of official policy in the form of rules, regulations and interpretations pursuant to the Administrative Procedure Act, treaties, conventions, or other formal documents establishing governmental or agency policy which

EXHIBIT C

Santa Ynez Valley Community Plan

County of Santa Barbara

Planning & Development Department

Office of Long Range Planning

Board of Supervisors Adopted

October 6, 2009

BACKSIDE OF COVER

Santa Ynez Valley Community Plan
OVERVIEW

The Valley

The oak-studded Santa Ynez Valley, nestled between two towering mountain ranges in central Santa Barbara County, boasts an enviable quality of life for its residents. Still-friendly small towns with unique individual character are linked by scenic rural roads featuring bucolic views of farms, ranches and pristine natural areas. The local economy is strong, anchored by thriving agriculture and tourism industries. Residents enjoy an unhurried pace of life, night skies still dark enough for stargazing, clean air, ample recreational opportunities and abundant natural resources. The rural charm, comfort and beauty of the Valley, that has remained relatively unchanged for so long, stands in stark contrast to the "Anytown USA" atmosphere that has engulfed many communities across California and the rest of the country.

The History

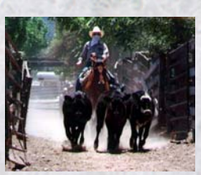
The Valley's present day character has been shaped by its rich and varied history and the diversity of peoples that have called it home: from its original settlement by the Inezeno Chumash people who inhabited 19 villages in the area, to the Spanish mission era that gave the Valley its name, to the Mexican land-grant rancho period that established agriculture as a dominant industry, to its role as terminus and transfer point of rail and stagecoach lines, to the establishment of the Danish colony of Solvang. Each period has left its mark on the Valley and is reflected in its buildings, people, customs, and rural lifestyle.

The Valley Blueprint

In 2000, a diverse group of local residents came together with the goal of preserving the special qualities of the Valley and painting a picture of its future. They produced a visionary document entitled "The Valley Blueprint" which outlined consensus-based goals for development, public services, agriculture and infrastructure.

The Santa Ynez Valley Community Plan

The Santa Ynez Valley Community Plan picks up where the Valley Blueprint left off and is intended to implement the Blueprint by translating "the vision" into formal policy that will preserve the character while enhancing its unique qualities. The Plan was developed over the course of 50+ community meetings with the involvement of hundreds of Valley citizens. The Plan process has not been easy, quick nor without controversy – but one might argue that few worthwhile civic efforts ever are.



BACKSIDE OF OVERVIEW

ACKNOWLEDGMENTS

Santa Barbara County Board of Supervisors

First District:	Salud Carbajal
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Fourth District:	Joni Gray
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attempting to clarify and augment previous input from the GPAC. Much of the VPAC's work has centered on framing the parameters for environmental review and highlighting alternatives to be studied in the EIR related to mixed use, design review and agricultural zoning.

The next step after initiation is the environmental review stage of the Plan. This will involve scheduling and noticing a public Environmental Impact Report (EIR) Scoping Hearing to give the public and other agencies and departments the opportunity to provide input on the scope of the Santa Ynez Valley Community Plan EIR.

E. EXISTING COUNTY PLANS AND POLICIES

Community plans must be internally consistent with the Comprehensive General Plan and as such must incorporate by reference relevant policies from the Comprehensive General Plan. Listed below are existing Comprehensive General Plan policies that are most relative to the Plan Area. The Santa Ynez Valley Community Plan augments these various elements of the Comprehensive General Plan to provide region specific policy direction, however countywide policies remain in effect.

1. LAND USE ELEMENT

The Land Use Element's four fundamental goals include:

1. Environment
"Environmental constraints on development shall be respected. Economic and population growth shall proceed at a rate that can be sustained by available resources."

2. Urbanization
"In order for the County to sustain a healthy economy in the urbanized areas and to allow for growth within its resources and within its ability to pay for necessary services, the County shall encourage infill, prevent scattered urban development, and encourage a balance between housing and jobs."

3. Agriculture
In rural areas, cultivated agriculture shall be preserved and where conditions allow, expansion and intensification should be supported. Lands with both prime and non-prime soils shall be reserved for agricultural uses.

4. Open Lands
"Certain areas may be unsuitable for agricultural uses due to poor or unstable soil conditions, step slopes, flooding or lack of adequate water. These lands are usually located in areas that are not necessary or desirable for future urban uses. There is no basis for the proposition that all land, no matter where situated or whatever the need, must be planned for urban purposes if it cannot be put to some other profitable economic use."

3. AGRICULTURE AND RURAL LANDS GOALS, POLICIES, ACTIONS AND DEVELOPMENT STANDARDS

GOAL LUA-SYV: **Protect and Support Agricultural Land Use and Encourage Appropriate Agricultural Expansion.**

Policy LUA-SYV-1: **The County shall develop and promote programs to preserve agriculture in the Santa Ynez Valley Planning Area.**

Policy LUA-SYV-2: **Land designated for agriculture within the Santa Ynez Valley shall be preserved and protected for agricultural use.**

Policy LUA-SYV-3: **New development shall be compatible with adjacent agricultural lands.**

DevStd LUA-SYV-3.1: New non-agricultural development adjacent to agriculturally zoned property shall include appropriate buffers, such as trees, shrubs, walls, and fences, to protect adjacent agricultural operations from potential conflicts and claims of nuisance. The size and character of the buffers shall be determined through parcel-specific review on a case-by-case basis.

Action LUA-SYV-3.2: The County should consider approval of Agricultural Industrial Overlay areas on a case-by-case basis to ensure that adequate facilities for processing, packaging, treatment and transportation of agricultural commodities exist in the Valley.

Policy LUA-SYV-4: **Opportunities for agricultural tourism shall be supported where such activities will promote and support the primary use of the land as agriculture without creating conflicts with on-site or adjacent agricultural production or impacts to the environment.**

Action LUA-SYV-4.1: The County shall consider an ordinance allowing agricultural farmstays in the Santa Ynez Valley in accordance with Health and Safety code Section 113870 where compatible with on-site and neighboring agricultural production.

Action LUA-SYV-4.2: Planning and Development and the Agricultural Commissioner shall coordinate with other County departments (e.g. Economic Development Agency) and local and statewide organizations to promote agricultural tourism activities that are available in the County (e.g., Farmers' Markets, U-pick, harvest festivals, wineries, farmstays, etc.).

Action LUA-SYV-4.3: Planning and Development shall work with the Agricultural Advisory Committee to create a new policy(ies) that provide land

owners with clear direction on the exacting standards, thresholds, policies, and findings required to approve agricultural land divisions. Policy language should clarify that land use and zoning designations do not provide vesting, and that land use densities are maximums that may be reduced based on specific conditions.

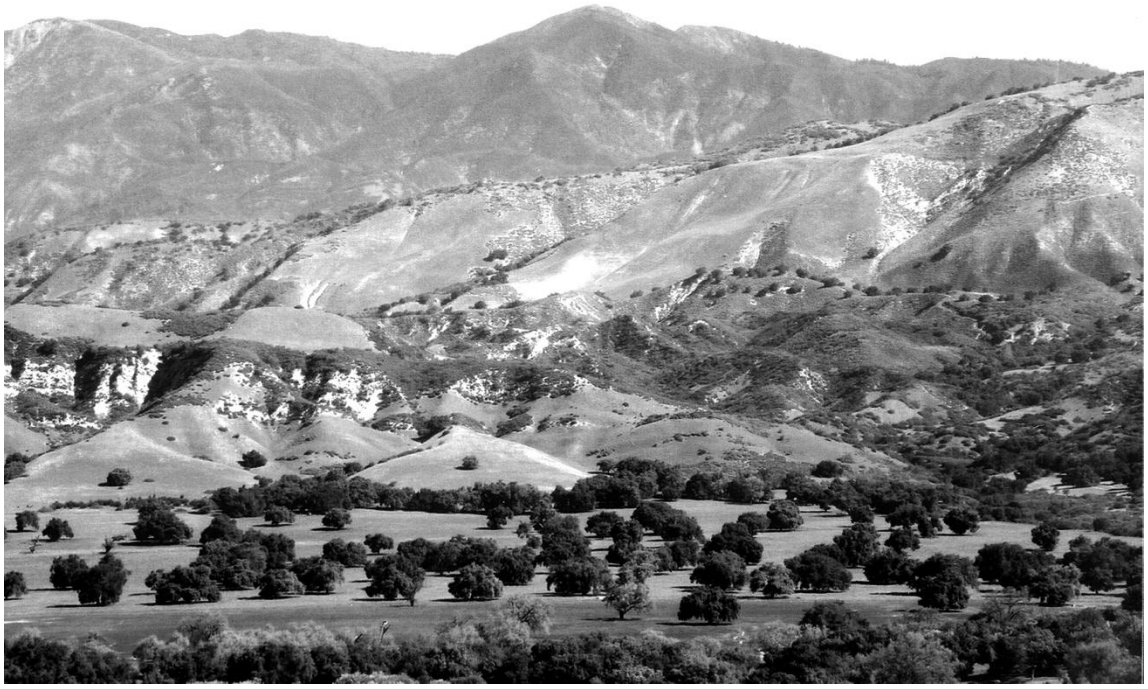
Policy LUA-SYV-5: **EDRN's may be rezoned to lower densities within the planning area.**

EXHIBIT D

COUNTY OF SANTA BARBARA

Planning and Development

Santa Barbara County Land Use & Development Code



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805.934.6250

NOTES:

This document is updated on a periodic basis in order to include amendments adopted by the Board of Supervisors. Recently adopted amendments may not yet be incorporated into this copy. Please check with the Planning and Development Department Zoning Information Counter located at either 123 East Anapamu Street, Santa Barbara, or 624 West Foster Road, Suite C, Santa Maria, for information on amendments approved subsequent to the date shown on the front of this publication.

August 2008 Replacement Pages

The following replacement pages were published in August 2008 to reflect revisions to the Development Code resulting from the adoption of the following ordinance by the Board of Supervisors. See Appendix A for information on the affected Development Code sections.

Ordinance No.4680 (Case No. 08ORD-00000-00006, adopted 07/15/2008) Permit Downshifting.

SECTION	PAGES
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ARTICLE 35.2	2-11 through 2-22, 2-29 through 2-44, 2-59 through 2-76, 2-91 through 2-110
ARTICLE 35.3	3-41 through 3-42
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August 2009 Replacement Pages

The following replacement pages were published in August 2009 to reflect revisions to the Development Code resulting from the adoption of the following ordinances by the Board of Supervisors. See Appendix A for information on the affected Development Code sections.

Ordinance No. 4714 (Case No. 09ORD-00000-00001, adopted 07/07/2009) Solar Energy Systems.
Ordinance No. 4718 (Case No. 09ORD-00000-00005, adopted 07/07/2009) Noticing Procedures.
Ordinance No. 4722 (Case No. 09ORD-00000-00008, adopted 07/14/2009) Permit Time Extensions.

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August 2011 Republished Development Code

The Development Code was republished in its entirety in August 2011 to reflect revisions to the Development Code resulting from the adoption of the following ordinances by the Board of Supervisors. See Appendix A for information on the affected Development Code sections.

Ordinance No.	Case No.	Date of Adoption	Subject
4686	08ORD-00000-00008	09/16/2008	Naples Transfer of Development Rights
4692	08ORD-00000-00009	10/02/2008	Naples Townsite Zone
4729	09ORD-00000-00010	10/06/2009	Santa Ynez Valley Community Plan
4750	09ORD-00000-00009	06/01/2010	Agricultural Permit Streamlining
4777	10ORD-00000-00003	12/14/2010	Small Wind Energy Systems
4779	08ORD-00000-00011	02/15/2011	Los Alamos Community Plan
4787	11ORD-00000-00005	05/17/2011	Commercial Telecommunications Facilities

December 2011 Republished Development Code

The Development Code was republished in its entirety in December 2011 to reflect revisions to the Development Code resulting from the adoption of the following ordinances by the Board of Supervisors. See Appendix A for information on the affected Development Code sections.

Ordinance No.	Case No.	Date of Adoption	Subject
4806	11ORD-00000-00029	11/01/2011	Medical Marijuana Dispensary Storefronts
4809	11ORD-00000-00012	11/01/2011	General Package Ordinance Amendments
4813	11ORD-00000-00024	12/06/2011	Economic Hardship Ordinance Amendment
4817	09ORD-00000-00022	12/06/2011	Hydraulic Fracturing of New or Existing Oil/Gas Wells

April 2012 Replacement Pages

The following replacement pages were published in April 2012 to reflect revisions to the Development Code resulting from the adoption of the following ordinance by the Board of Supervisors. See Appendix A for information on the affected Development Code sections.

Ordinance No. 4828 (Case No. 11ORD-00000-00017, adopted 03/13/2012) Mobilehome Park Closures.

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June 2013 Replacement Pages

The following replacement pages were published in June 2013 to reflect revisions to the Development Code resulting from the adoption of the following ordinances by the Board of Supervisors. See Appendix A for information on the affected Development Code sections.

Ordinance No. 4851 (Case No. 12ORD-00000-00011, adopted 04/09/2013) Agricultural Buffers.

Ordinance No. 4856 (Case No. 13ORD-00000-00002, adopted 06/04/2013) Cottage Food Operations

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June 2014 Replacement Pages

The following replacement pages were published in June 2014 to reflect revisions to the Development Code resulting from the adoption of the following ordinances by the Board of Supervisors and to correct minor formatting errors. See Appendix A for information on the Development Code sections that were amended.

Ordinance No. 4880 (Case No. 11ORD-00000-00032, adopted 04/01/2014) Mission Canyon Community Plan.
Ordinance No. 4882 (Case No. 13ORD-00000-00008, adopted 04/15/2014) 2013 General Package.
Ordinance No. 4886 (Case No. 14ORD-00000-00001, adopted 05/06/2014) Summerland Community Plan Update.

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October 2014 Replacement Pages

The following replacement pages were published in October 2014 to reflect revisions to the Development Code resulting from the adoption of the following ordinances by the Board of Supervisors. See Appendix A for information on the Development Code sections that were amended.

Ordinance No. 4894 (Case No. 11ORD-00000-00016, adopted 07/08/2014) Agricultural Processing.
Ordinance No. 4900 (Case No. 10ORD-00000-00001, adopted 10/07/2014) Cuyama Solar Facility.
Ordinance No. 4901 (Case No. 14ORD-00000-00007, adopted 10/07/2014) Summerland Community Plan Update.

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December 2015 Replacement Pages

The following replacement pages were published in December 2015 to reflect revisions to the Development Code resulting from the adoption of the following ordinances by the Board of Supervisors. See Appendix A for information on the Development Code sections that were amended.

Ordinance No. 4942 (Case No. 11ORD-00000-00015, adopted 10/20/2015) Eastern Goleta Valley Community Plan.
Ordinance No. 4946 (Case No. 15ORD-00000-00012, adopted 11/03/2015) 2015 Housing Element Implementation.

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12-2015

SANTA BARBARA COUNTY LAND USE & DEVELOPMENT CODE

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Appendices

Attachments

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ARTICLE 35.2

Zones and Allowable Land Uses

Table 2-2 - Minimum Lot Area/Building Site Area

Zoning Map Symbol	Minimum Gross Lot Area
AG-I-5	5 acres
AG-I-10	10 acres
AG-I-20	20 acres
AG-I-40	40 acres
AG-II-40	40 acres
AG-II-100	100 acres
AG-II-320	320 acres

35.21.050 - Agricultural Zones Development Standards

A. General development standards. Development within the Agricultural zones shall be designed, constructed, and established in compliance with the requirements in Table 2-3 (AG-I and AG-II Zones Development Standards) below, and all applicable standards in Article 35.3 through Article 35.7 of this Development Code. These standards apply within the Coastal Zone and Inland area, except where noted.

B. Community Plan overlay requirements. Section 35.28.210 (Community Plan Overlays) establishes additional requirements and standards that apply to development and uses located in an applicable community or area plan as specified in Section 35.28.210 (Community Plan Overlays).

Table 2-3 - AG-I and AG-II Zones Development Standards

Development Feature	Requirement by Zone	
	AG-I & AG-I (CZ) Agriculture I	**AG-II & AG-II (CZ) Agriculture II**
Residential density	*Maximum number of dwelling units allowed on a lot. The actual number of units allowed will be determined through subdivision or planning permit approval.*	
Maximum density	1 one-family dwelling per lot; plus agricultural employee housing, residential agricultural units, and second units, where allowed by Table 2-1 and applicable standards provided that the lot complies with Section 35.21.040 (Agricultural Zones Lot Standards).	
Setbacks	*Minimum setbacks required. See Section 35.30.150 (Setback Requirements and Exceptions) for exceptions. Required building separation is between buildings on the same site.*	
Front	50 ft from road centerline and 20 ft from edge of right-of-way.	50 ft from road centerline and 20 ft from edge of right-of-way.
Side	20 ft; 10% of lot width on a lot of less than 1 acre, with no less than 5 ft or more than 10 ft required.	None.
Rear	20 ft; 25 ft on a lot of less than 1 acre.	None.
Building separation	None, except as required by Building Code.	
Height limit	*Maximum allowable height of structures. See Section 35.30.090 (Height Measurement, Exceptions and Limitations) for height measurement requirements, and height limit exceptions.*	
Maximum height	35 ft for a residential structure, no limit otherwise; **Toro Canyon Plan area** - 25 ft for a residential structure.	**Coastal** - No limit; **Inland** - 35 ft for a residential structure, no limit otherwise; **Toro Canyon Plan area** - 25 ft for a residential structure.
Landscaping	See Chapter 35.34 (Landscaping Standards).	
Parking	See Chapter 35.36 (Parking and Loading Standards).	
Signs	See Chapter 35.38 (Sign Standards).	

C. Development standards for agricultural structural development that does not require the approval of a Final Development Plan. In addition to the development standards listed in Subsections 35.21.050.A, above, all development associated with the construction of agricultural structural

CERTIFICATE OF SERVICE

I certify that on the 15th day of December 2015, I delivered a true copy of the foregoing *Opening Brief of Appellant Santa Ynez Valley Alliance* to each of the persons named below, either by depositing an appropriately-addressed copy in the United States mail, by email, or both.

/S/ Nicole Di Camillo

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