



July 10, 2014

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VIA U.S. MAIL AND EMAIL

Re: Comments on Final Environmental Assessment for Santa Ynez Band of Chumash Indians Camp 4 Fee-To-Trust

Dear Ms. Dutschke:

This comment letter is sent by the Environmental Defense Center (EDC) on behalf of the Santa Ynez Valley Alliance (SYVA), in response to the Bureau of Indian Affairs' (BIA) Final Environmental Assessment (Final EA) for the proposed Santa Ynez Band of Chumash Indians Camp 4 Fee-to-Trust proposal. The SYVA works collaboratively with individuals, groups and governments to protect the rural character of the Santa Ynez Valley and support good stewardship of natural and agricultural resources through education, comprehensive planning and public participation. EDC protects and enhances the environment through education, advocacy and legal action.

SYVA appreciates the opportunity to comment on the Final EA and on the responses to comments on the Draft Environmental Assessment (Draft EA) contained in the Final EA. SYVA maintains that the proposed project still imposes several significant impacts, precluding issuance of a Finding of No Significant Impact (FONSI). As stated in its comment letter on the Draft EA, SYVA contends that an Environmental Impact Statement (EIS) is required in order to fully evaluate and disclose the significant impacts of the proposed project.

Several significant impacts – impacts to biological resources, loss of agricultural land, land use conflicts, and cumulative impacts – which are important issues to SYVA and its members – are inadequately addressed in the EA and must be fully identified and addressed through the EIS process. As discussed in detail below, the flaws in the EA make it legally inadequate under the National Environmental Policy Act (NEPA), and we strongly encourage the BIA to initiate preparation of an EIS, so that the public and decision makers will be fully informed of the project's potential impacts.

I. Summary

As discussed in detail below, the Final EA for the proposed project is insufficient. The Final EA fails to analyze a reasonable range of alternatives for the project, inappropriately winnowing down the available alternatives by claiming that the objectives of the proposed project cannot occur without the fee-to-trust transfer, a tactic that results in alternatives that do not actually lessen many of the potentially significant effects of the project.

The Final EA also fails to adequately address and analyze the potentially significant impacts of the proposed project on a host of biological resources, including oaks and oak savannahs, birds, wetlands and state-listed species. In addition, the Final EA fails to adequately address and analyze potentially significant impacts caused by the proposed project's conflict with land use policies and ordinances, especially in regards to agricultural land conversion, and conflicts with biological resources policies.

Furthermore, the Final EA fails to adequately identify and analyze potential cumulative impacts of the proposed project, a significant requirement under NEPA. Given all of the deficiencies in the EA's analysis, it is clear that an EIS is required in order to fully address the potentially significant effects of the proposed project. Not only has the EA failed to adequately raise and analyze all potentially significant impacts, those potentially significant impacts actually raised in both the EA and by commenters on the EA indicate that an EIS is required.

II. Project Alternatives

A fundamental problem with the 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...”). 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.” *Id.*

Here, the BIA has foreshortened the available alternatives for the project by inaccurately claiming that the purpose of the proposed project cannot be accomplished without the fee-to-trust transfer. The EA states that the purpose for taking the property into trust is to “provide housing to accommodate the Tribe’s current members and anticipated growth.” (Final EA at 1-6). The Final EA then states:

[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. Other potential alternatives to the Proposed Action, such as a reduction in the number of parcels taken into trust or alternative locations do not meet the definition of “reasonable” under the CEQ Regulations for Implementing NEPA.

Final EA at 2-1. The EA fails to acknowledge that the purpose and need for the project can be accomplished without taking the property into trust. The Tribe could pursue existing County processes for rezoning and redevelopment of the fee property to accommodate housing and other project objectives. The failure of the EA to analyze this option as an alternative makes the analysis inadequate under NEPA and conflicts with the BIA's own regulations, which require BIA to review not only the purpose for which the land will be used in a fee-to-trust application, but also "[j]urisdictional problems and potential conflicts of land use which may arise" (25 C.F.R. § 151.10).

Given the significant impacts to the property resulting from development of the land for residential and tribal facilities, the EA should have analyzed a greater range of alternatives that provide more options for minimizing the impacts of the proposed development (e.g., a "clustered" approach to development of housing, greater preservation of agricultural land and biological resources, etc.).

One of the major impacts of the proposed project is the conversion of the subject 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 two alternatives were "nearly identical" and the agency failed to analyze an alternative that would have reduced the amount of timber harvest. 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 (Final EA at 3-16).

The narrow range of alternatives studied in the EA fails to satisfy NEPA's requirement that a reasonable range of alternatives be analyzed. Based on this and the other significant impacts of the proposed project, the BIA should develop an EIS that includes additional alternatives that meet the project's objectives, but do so with lesser development intensity, and which would analyze the possibility of obtaining the project objectives without a fee-to-trust transfer. See *W. Watersheds Project v. Abbey* (9th Cir. 2013) 719 F.3d 1035, 1050-51 (holding that an EA for a grazing allotment violated NEPA because the alternatives analysis, which considered three alternatives in addition to the no-action alternative, failed to address a reasonable range of alternatives):

[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*.

Id. at 1050-53 (emphasis added). Likewise here, the EA fails to consider how the proposed need for the project – housing and tribal facilities – 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.

III. Environmental Consequences

The EA fails to adequately address impacts to biological resources, land use impacts, and conflicts with local ordinances and policies that protect biological and other resources. The Final EA also fails to respond to several comments made on the Draft EA on these issues. Because the EA fails to adequately address environmental consequences, and because there are environmental consequences constituting potentially significant effects on the environment, an EIS is necessary.

A. Biological Resources

i. Evidence by Hunt and Associates Biological Consulting Services demonstrates that the EA insufficiently addresses Impacts to Biological Resources, necessitating an EIS

Hunt and Associates Biological Consulting Services concludes that the Final EA does not adequately respond to comments submitted on the Draft EA, and that an EIS is required to address significant biological resource impacts. By focusing on several EA responses to comments and important biological issues below, Hunt and Associates illustrates substantive deficiencies with the Final EA.¹

P996-02, p. 3-194 and P998-26, p. 3-201

The mitigation for impacts to nesting and roosting birds, including federally-regulated bald eagles, golden eagles and mountain plovers, is inadequate because it calls for nesting surveys within 14 days of construction beginning, but does not require that the nesting surveys occur during the nesting season. Moreover, the EA includes less than half the birds recorded on the site by the Audubon society experts, demonstrating the EA's insufficiency in evaluating impacts to avian species.

P998-04, p. 3-195 and P998-28, p. 3-202

Without evidence, the EA incorrectly states that the primary wildlife movement corridor is a degraded stream channel. The EA ignores the value of the site as a wildlife and plant dispersal corridor and the value of connected upland habitat as wildlife movement corridors.

P998-12, p. 3-196

The modified Biological Assessment (BA) notes that focused botanical surveys were only conducted during a 7-week window in one year (early March and late April 2012), not over three seasons as stated in the Response to Comment. Seasonal precipitation was significantly below average during the 2011/2012 and 2012/2013 rainy seasons, so focused surveys should be conducted during at least one season of average or above-average precipitation.

¹ Hunt and Associates Biological Consulting Services, Comments on Final Environmental Assessment for Santa Ynez Band of Chumash Indians Camp 4 Fee-to-Trust, Santa Ynez Valley, Santa Barbara County, California, *attached hereto* as Exhibit A.

P998-15, p. 3-197

The Tribal Oak Tree Ordinance affords little or no protection to oaks under the proposed development scenarios, allowing removal to accommodate development and affording no protection to blue oaks. The Ordinance and proposed Best Management Practices identified in the EA allow for cutting, trimming, and pruning oak trees in the Resource Management Zone (RMZ), and appears to allow vague “limited” ground disturbance within the dripline of oaks, damaging the small feeder roots upon which mature oak trees depend and disrupting recruitment of oaks but the EA overlooks these impacts.

P998-16, p. 3-197

In Figure 3-4 in the Final EA, oak trees in the southern half of the Project area appear in densities comparable to those mapped as oak savanna in the north, but are not mapped as savannah habitat. The EA fails to explain the rationale for considering oaks in the north to be part of a savannah but not considering oaks in the south to be part of a savannah. Figure 3-4 and the analysis of impacts underestimate the extent of oak savanna. Both Alternatives A and B result in significant loss of individual oak trees and fragmentation of existing oak savannah habitat, which is a significant impact.

P998-22 on pages 3-199 and 3-200

The Final EA includes a mitigation measure that states that, “Should the USFWS determine that even with the mitigation presented in the BA, impacts to VPFS may be significant, the Tribe shall, through passage of a Business Committee Resolution, only approve for consideration those site plans that exclude development of residential units within the VPFS designated critical habitat.” (Final EA at 5-6). This contingency significantly changes both development scenarios and would require additional analysis to determine the effects of restricting development to the northern half of the Project area on biological resources.² Regardless, unless and until this measure is incorporated into the project or an enforceable MOU, it is uncertain how effective it will be.

Impacts of Night-Lighting

The Final EA does not analyze impacts of night-lighting on wildlife use of RMZs and open space areas adjacent to development envelopes.

Review of BIA Letter requesting concurrence from USFWS that Project Alternatives A and B will not significantly affect VPFS and CRLF (Appendix R in Final EA).

Statements that the Project will have no impact on California Red Legged Frog (CRLF) are likewise conjectural. CRLF are capable of moving distances in excess of a mile through upland habitat from aquatic sites.

² SYVA supports clustering residential development as described in this mitigation measure.

ii. The EA Fails to Address Potential Impacts to State-Listed Species in Violation of NEPA.

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. The Final EA’s justification for such failure to address potential impacts to these species, which claims that under CEQ Regulations for Implementing NEPA and the BIA NEPA Guidebook a “discussion of federally-listed species is sufficient for an EA,” is clearly erroneous (Final EA at 3-194). See *Sierra Club v. U.S. Forest Serv.* (9th Cir. 1988) 843 F.2d 1190, 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). The CESA is clearly a state law which implements requirements for the protection of the environment and therefore any potential violation of this law by the proposed project must be addressed.

The BIA cannot limit its analysis to only federally-listed species, when the project could potentially impact state-listed species or state Species of Special Concern, in violation of CESA. CESA-listed species in Appendix E that were not analyzed in the EA include seaside bird’s beak. While this species is a coastal dune plant, it has been recorded and vouchered near Lompoc, California and has the potential to occur onsite. Other state-protected species that were not addressed in the EA but occur in the Project vicinity include Coulter’s goldfields, Dwarf calceadenia, and a number of other plants, as well as pallid bat and Townsend’s big-eared bat and other wildlife species.³ Some of these state-protected species are included in EA Appendix E (e.g., Coulter’s goldfields) but were not addressed in the EA’s impact analysis. Other species (e.g., pallid bat) and several species identified by Santa Barbara Audubon (i.e., three Watch List species observed onsite: prairie falcon, ferruginous hawk and California horned lark, and two State Species of Concern expected to occur onsite: grasshopper sparrow and burrowing owl)⁴ are omitted from and not addressed in the EA or Appendix E. California horned lark has been recorded breeding on the Project site by Audubon, an organization with renowned expertise in ornithology. In *Sierra Club*, the court held 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. *Sierra Club*, 843 F.2d at 1195.

The CEQ regulations, 40 C.F.R. § 1508.27(b)(10), require [agencies] to consider state requirements imposed for environmental protection to determine whether the action will have a significant impact on the human environment...[n]owhere do the EAs mention the impact of logging upon California’s water quality standards. Because substantial

³ See comments by Hunt and Associates Biological Consulting Services on Draft EA. October 2, 2013.

⁴ Santa Barbara Audubon Society comments on Draft EA. October 5, 2013.

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]. *Sierra Club*, 843 F.2d at 1195.

The EA’s failure to analyze the potential for state-listed species to occur on the project site fails to comply with NEPA’s requirement that an agency determine whether an action significantly affects the environment by assessing whether the action “*threatens a violation of...State, or local law or requirements imposed for the protection of the environment*” *Sierra Club*, 843 F.2d 1190 (emphasis added). This failure renders the EA inadequate, and indicates that an EIS is necessary in order to address such potentially significant effects on the environment.

iii. The EA Fails to Address Impacts to Coast Live and Valley Oaks, Which are Protected by Local Ordinances.

Just as with potential violations of CESA, the EA should also address potential violation of local ordinances that protect environmental resources such as oak trees. SYVA raised this issue in its comments on the Draft EA. The comments stated that the oak savanna vegetation alliance “include[s] both coast live and valley oaks, both of which are protected by County ordinance.” (Comment Letter P998).⁵ The Final EA’s response to comments does not respond to this issue (Final EA at 3-195, addressing comment P998-04), nor does the EA address this potential conflict with a “local law or requirements imposed for the protection of the environment,” as required by NEPA. 40 C.F.R. § 1508.27(b)(10).

iv. The EA fails to Consider Impacts to all Wetlands.

The EA fails to consider wetlands pursuant to the definition utilized by the County of Santa Barbara, the US Fish and Wildlife Service and the California Fish and Game Commission. These agencies consider areas which exhibit wetland hydrology, wetland soils or wetland vegetation to be wetlands (a 1-parameter wetland).⁶ However, the EA appears to only consider an area to be a wetland if it exhibits all three wetland parameters (a 3-parameter wetland).⁷ As a result, areas which would be identified and protected as wetlands by the County and other agencies may not even be identified in the EA.

⁵ County of Santa Barbara Deciduous Oak Tree Protection and Regeneration. Article IX of Chapter 35, Santa Barbara County Code. *See also* Santa Barbara Comprehensive Plan Conservation Element – Oak Tree Protection in the Inland Rural Areas of Santa Barbara County.

⁶ Santa Barbara County CEQA Thresholds and Guidelines Manual at 6-5 & 6-7.

⁷ EA at 3-30.

v. The EA fails to include Buffers around Wetlands to Prohibit Development that would Damage the Wetlands.

The EA at 4-13 – 4-14 incorrectly characterizes the mitigation measures from the BA and EA pages 5-4 through 5-6 as requiring permanent buffers around – and preservation of – all seasonal wetlands and wetland swales. However, the BA and EA merely require *temporary* buffers during construction. Moreover, these measures *allow development within the buffers*. Contrary to the EA’s assertion, there are no apparent measures that require the proposed project to avoid buffer areas around the seasonal wetlands and swales. The EA appears factually incorrect in this regard – on one hand claiming that buffers will protect the wetlands but on the other hand allowing development within those buffers. An EIS should be developed which will either (1) clarify that wetland buffer mitigation measures allow development within the buffers and therefore find a significant impact to wetlands, or (2) require avoidance of all 1-, 2- and 3-parameter wetlands.

Hunt and Associates Biological Consulting Services takes issue with the EA’s treatment of wetland buffers in Response P998-22 on pages 3-199 and 3-200: The Final EA’s response is confusing because it describes buffers around wetlands but then allows development within those buffers.

vi. The EA incorrectly claims that Impacts to Sensitive Habitats potentially supporting Locally Rare Species would be protected through Santa Barbara County Mitigation Requirements.

The EA claims that “Any sensitive habitats with the potential to support populations of local endangered species would be protected through Santa Barbara County mitigation requirements.”⁸ However, in other places, the EA points out that once taken into trust, the property will no longer be under the land use jurisdiction of the County, making County mitigation requirements inapplicable to the property. An EIS should be developed which requires that County mitigation measures be implemented.

vii. The EA’s Oak Tree Mitigation Measures are Insufficient to reduce Impacts to Oak Trees and Oak Savannah Habitat to Less than Significant.

For the following reasons, the EA’s mitigation measures for loss of oak trees are insufficient, warranting a significant impact finding.

- Replanting oak trees does not mitigate for lost oak savannah habitat because oak savannah habitat consists of many interacting species in addition to oak trees, including understory plant species.
- The measure does not specify whether planted oaks must be from local acorns adapted to the site to ensure success, and to preserve the oak population’s genetic

⁸ EA at 4-63.

integrity, which is standard practice in oak habitat and native oak tree replacement.

- Performance standards for successfully replacing oak trees, such as percent survival and growth rates, are not included in the EA.
- The measure does not require revising the project design to avoid oak trees where feasible.

Hunt and Associates Biological Consulting Services also addresses the inadequacy of oak tree and oak habitat mitigation. In Response to Comment P998-17 at page 3-198 and Response to Comment P998-31 and page 3-203, the responses simply repeat the “mitigation” measure which is confusing because it uses undefined terms such as “limited.”

According to Hunt and Associates, the oak tree mitigation program in Section 5.4 of the Final EA falls far short of protecting or enhancing oak resources impacted by either development scenario because:

- Routine County and State replacement standards, including the County Oak Tree Protection and Regeneration Ordinance, require a minimum 10:1 replacement ratio in order to result in no net loss of oak trees. The Final EA and Tribal Oak Tree Ordinance propose no such ratio, nor performance standards assuring “no net loss” of oak trees. A 10:1 ratio is necessary to account for mortality and to address the temporal impacts of replacing 100+ year old trees with saplings.
- A qualified biologist, not a “qualified arborist”, should survey trees that will be removed to assess issues such as the impacts on resident hole-nesting species (e.g., such as acorn woodpeckers and bats). However, the analyses were limited only to project-related effects on federally-listed species, and omits these impacts.
- Perhaps most importantly, the oak tree mitigation program focuses oak replacement (planting) on a few drainages and vegetated swales and their narrow buffers, and does not promote oak regeneration, which is needed to ensure survival of the oak savannah habitat over time.

viii. Waters of the U.S. Mitigation Measures do not reduce Impacts to Less than Significant.

For the following reasons, the EA’s discussion of impacts to Waters of the U.S. and related mitigation measures appear inconsistent and moreover are insufficient to lessen significant impacts:

- Mitigating impacts to Waters of U.S. does not necessarily mitigate impacts to all 1-, 2- and 3-parameter wetlands.

- The EA finds that Waters of the US will be replaced at a minimum 1:1 ratio.⁹ However, the EA also says that seasonal wetlands will be avoided “during construction.”¹⁰ It appears inconsistent to state on one hand that the loss of 2.28 acres of seasonal wetlands, wetland swales and ephemeral drainages will be fully mitigated at a minimum of 1:1, and on the other hand to state that all seasonal wetlands will be buffered and avoided.¹¹ An EIS should be required which clarifies whether wetlands and Waters of the US are being completely avoided by development or will be impacted and replaced with artificial wetlands.

*ix. Responses to Hunt and Associates Biological Consulting Services
Comments:*

RTC P998-13

The response to Hunt’s comment P998-13 fails to acknowledge the local definition (or any definition) for native grassland. The County definition includes all areas where relative cover by native grassland species exceeds 10%.¹² Instead, without referencing any definition, the EA claims that native grasses are not “dominant” and therefore that native grasslands do not occur onsite.

In addition, non-grass species such as forbs and wildflowers, which help comprise native grasslands, are important indicators of the presence of native grasslands, but the EA also fails to consider the relative cover of non-grass species that occur in native grasslands. As a result, the EA lacks substantial evidence to find that there are no native grasslands onsite.

RTC P998-14

The EA fails to respond to Hunt’s comment P998-14 specifically regarding using acoustic surveys to identify bats. Failure to identify any bat species is a major omission. Bats including State Species of Concern are believed to utilize the site.¹³ Approximately half of local bat species are considered rare.

RTC P998-24

The response to Hunt’s comment P998-24 does not address impacts to foraging raptors such as the Golden Eagle. This omission is significant in that the EA only assesses impacts to nesting and roosting raptors. Foraging habitat is critical to support roost and nest sites. Nesting cannot be successful if foraging habitat to support nesting is insufficient. Failure to consider impacts to foraging habitat, and by extension to suitable nest sites and nesting success, is a substantial omission in the EA.

⁹ EA at 5-5.

¹⁰ EA at 5-5.

¹¹ EA at 5-5.

¹² Santa Barbara County Thresholds and Guidelines Manual at 6-8 and 6-9.

¹³ Hunt and Associates Biological Consulting Services comments on Draft EA at 8. October 3, 2013.

RTC P998-33, -34, and -35

The EA responses bear no relationship to Hunt and Associate's comment P998-33, -34 and -35. The EA does not respond to Hunt's comments P998-33, -34 and -35. This appears to be an error during drafting of the final EA. Failure to respond to these comments is a significant omission which renders the EA inadequate pursuant to NEPA.

RTC P998-42 – P998-46

The EA entirely omits any responses to Hunt and Associate's comments P998-42 through P998-46. This is a significant omission that renders the EA incomplete and legally flawed.

B. Land Use

Under NEPA, the 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 EA mentions existing land use designations and policies, the EA fails in many instances to adequately identify the significant impacts of the project caused by conflicts with existing land use designations and policies. *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.”).

Instead, the EA in several instances erroneously claims that there would *only* be conflicts if the project resulted in local agencies being unable to enforce their own policies *outside* of the project's boundaries. (Final EA at 3-15). While in some instances, the EA must analyze impacts outside the project's boundaries – for example, as discussed below, biological resource policies that would span the proposed project site and lands outside the project site, cumulative impacts, etc. – analysis of the project's conflicts with local policies and ordinances is a distinct requirement under NEPA,¹⁴ entirely separate from an analysis of project's impact on local government's ability to apply those policies and ordinances on parcels outside the project boundaries.

i. Agricultural Land Conversion

Because the conversion of approximately 86% of the property from agricultural land use designation to non-agricultural uses conflicts with the Santa Barbara Comprehensive Plan and the Santa Ynez Valley Community Plan (SYVCP), both of which protect agriculture, this should be considered a significant impact in the EA and analyzed as such. The Comprehensive Plan's Land Use Element's policies conclude that:

¹⁴ 40 C.F.R. 1502.16(c).

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.¹⁵

The SYVCP also specifically states that “[l]and designated for agriculture within the Santa Ynez Valley shall be preserved and protected for agricultural use.”¹⁶

The EA fails to address the proposed project’s direct conflicts with these existing land use policies. The Draft 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[.]” (Draft EA at 3-57, 4-20). The EA does not, however, analyze these conflicts as significant impacts, instead claiming that “adverse impacts to land use 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*.” (Final EA at 3-15) (emphasis added).

Although it is accurate that after the trust acquisition the project parcels would be exempt from County land use regulations, the EA should still address the impacts of the proposed project based on current land use plans and policies. *See* BIA NEPA Handbook, Appendix 17 at 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 potential and actual conflicts, and relying on the change in land use jurisdiction that would occur *after the project’s approval*, the EA fails to adequately inform the public of the full impacts of the proposed project. *See 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, stating, “NEPA obligations to determine the projected extent of the environmental harm to enumerated resources *before* a project is approved.”) (emphasis original).

¹⁵ SYVCP at 8, *citing* Santa Barbara County Comprehensive Plan, *Land Use Element*. *See also* *Agricultural Element*, containing numerous goals and policies to protect and maintain agriculture.

¹⁶ Policy LUA-SYV-2 (SYVCP at 73).

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 EA here also relies 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 potential conflicts with local land use ordinances and policies, nor the requirement to assess the potential impacts of a project in comparison to the *existing* environmental setting. The EA is therefore flawed in this assessment and an EIS should be developed to fully analyze these potentially significant impacts.

ii. Conflicts with Santa Ynez Valley Community Plan Biological Resources Policies

The proposed project also has several conflicts with the Biological Resource Protection Policies and Development Standards contained in the SYVCP, but the EA omits analysis of all of these Policies and Development Standards. The EA must be revised to find significant Land Use and Biological Resources Impacts due to these conflicts.

The EA states that impacts to biological resources “would be considered significant if Alternative A would ... conflict with local Policies or Ordinances protecting biological resources.” However, the EA then fails to analyze consistency with local Policies and Ordinances adopted to protect biological resources. SYVA conducted the attached analysis, Exhibit B, of consistency with the SYVCP Biological Policies and Development Standards. As shown in this analysis, the Project conflicts with numerous Policies and Development Standards enacted for the purpose of protecting biological resources. The plain language in the EA's Biological Resources section requires the BIA to analyze the Project's consistency with Policies and Ordinances on the Project site. However, no such analysis was undertaken in the EA. Therefore, the attached Policy Consistency Analysis is the only evidence in the record regarding the Project's compliance with biological resources Policies and Ordinances. This analysis supports a finding that the Project conflicts with applicable Policies and Development Standards, and therefore supports a finding that the Project results in significant biological resource and land use impacts.

In addition, the EA also does not consider or analyze consistency with the SYVCP's biological resource policies as they would apply to lands *outside the Project site* (e.g., policies affecting wildlife corridors that span the site and adjacent parcels such as DevStd BIO-SYV-3.1¹⁷), as the EA itself says is required. With regards to wildlife corridors, the Project will interrupt an important onsite wildlife movement corridor as noted by Hunt and Associates, and as a result the County will no longer be able to apply and enforce this Development Standard on adjoining parcels because the wildlife corridor would have already been broken by the proposed project. There is simply no mention of these Policies and Development Standards in the EA. This significant omission renders the EA inadequate under NEPA.

¹⁷ DevStd BIO-SYV-3.1: Development shall not interrupt major wildlife travel corridors. Typical wildlife corridors include riparian habitats, rivers, streams, and floodplains, and unfragmented areas of grassland, oak woodland, and coastal scrub. Corridors shall allow for wildlife movement. Where practical, options for road undercrossings shall be explored.

IV. Cumulative Impacts

The EA fails to adequately consider all potential cumulative effects of the project. Under NEPA, EAs must adequately analyze the cumulative effects of a proposed project. *See Native Ecosystems Council v. Dombeck* (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 original). *See also Te-Moak Tribe of W. Shoshone of Nevada v. U.S. Dep’t of Interior* (201) 608 F.3d 592, 602 (An EA must “fully address cumulative environmental effects or ‘cumulative impacts.’”).

The EA fails to adequately consider the potential cumulative effects of:

1. Conversion of agricultural land;
2. The potential for resubmission of the Tribal Consolidation and Acquisition (TCA) Plan; and
3. The potential for redevelopment of existing housing on tribal lands.

The EA fails to address the potential cumulative effect of conversion of such a large amount of land from agricultural designation to non-agricultural uses. The Draft EA cursorily states:

[t]he proposed development of residential and governmental uses on land that is currently zoned for agriculture would not contribute to the conversion of surrounding agricultural land. Existing agricultural operations in the area would not be converted; therefore, implementation of Alternative A or Alternative B would not contribute to cumulatively considerable impacts to agriculture in the region.

Draft EA at 4-64.

The EA fails to address whether the conversion of such a large swath of land from agricultural to non-agricultural land may have indirect effects on the community. Indirect effects 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*, and related effects on air and water and other natural systems, including ecosystems.” 40 C.F.R. § 1508.8 (emphasis added). *See, e.g., TOMAC v. Norton* (2003) 240 F. Supp. 2d 45, 50 (BIA EA for casino development was held inadequate for failing to take requisite “hard look” at potential impacts of casino upon growth and development of local community, stating “[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 create the impression that such conversions are acceptable, encouraging other local land owners to seek the same conversions. Such conversions can cumulatively result in changes to the rural and agricultural character of the

community, which conflicts with the policies set forth in the SYVCP for agricultural protection and promotion. The SYVCP states, “agriculture is a strong component of community identity and a major contributor to the Santa Ynez Valley’s economy” and “land designated for agriculture within the Santa Ynez Valley shall be preserved and protected for agricultural use.” (SYVCP at 2, 73). The EA should have addressed the potential cumulative impacts of agricultural land conversion and the failure to do so fails to comply with NEPA’s requirement to analyze cumulative impacts. 40 C.F.R. § 1508.8.

The Final EA also fails to consider the potential for resubmission of the already approved Tribal Consolidation and Acquisition Plan and corresponding Tribal Consolidation Area (TCA). The Tribe submitted the TCA Plan to the BIA in March 2013, identifying approximately 11,500 acres for acquisition within the Santa Ynez Valley. Although following appeals the Tribe withdrew the already-approved TCA Plan, this was done without prejudice (Final EA at 3-2 – 3-3), meaning that the Tribe could request the Plan be reinstated at any time. This is a reasonably foreseeable possibility that warrants much greater review of the potential cumulative impacts of the proposed project and the TCA Plan. 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 N. Plains*, 668 F.3d at 1078-79:

[P]rojects need not be finalized before they are reasonably foreseeable. “NEPA requires that an EIS engage in reasonable forecasting. Because speculation is ... implicit in NEPA, [] we must reject any attempt by agencies to shirk their responsibilities under NEPA by labeling any and all discussion of future environmental effects as crystal ball inquiry.” [CITATIONS]...“reasonably foreseeable future actions need to be considered even if they are not specific proposals.” [CITATIONS].

Here, 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. NEPA requires agencies to identify such potential future projects and analyze the cumulative impacts. *See Te-Moak Tribe*, 608 F.3d at 607, *supra* (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).

Finally, the EA fails to consider the potential cumulative impacts from potential redevelopment of the existing tribal housing that may no longer be utilized for housing after development of the new housing identified in the proposed project. The BIA has the burden of identifying and analyzing potential future projects that warrant a cumulative effects analysis. *See Te-Moak Tribe*, 608 F.3d at 605, *supra* (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.”) Accordingly, the EA must identify the future uses of the existing tribal housing sites and how those future uses combined with the

proposed project may create cumulative impacts (e.g., growth inducement, population density, water resources, etc.).

V. Mitigation

As part of the justification for not producing an EIS, the Final EA states that “[t]he Tribe will be legally bound to implement mitigation measures, which are necessary to reduce adverse impacts to a minimal level, because it is intrinsic to the project, required by federal law, required by agreements between the Tribe and local agencies, and/or subject to a tribal resolution.” (Final EA at 3-5). NEPA requires that mitigation measures be identifiable enough to be meaningfully evaluated. 40 C.F.R. 1502.16(h). *See Neighbors of Cuddy Mountain v. U.S. Forest Serv.* (9th Cir. 1998) 137 F.3d 1372, 1380 (Forest Service EIS was inadequate due in part to “perfunctory description of mitigating measures,” stating “Mitigation must be discussed in sufficient detail to ensure that environmental consequences have been fairly evaluated...[a] mere listing of mitigation measures is insufficient to qualify as the reasoned discussion required by NEPA.”). *See also Blue Mountains Biodiversity Project v. Blackwood* (9th Cir. 1998) 161 F.3d 1208, 1214 (EA inadequate for inadequacy of mitigation measures).

Because the Final EA relies on the conclusion that mitigation measures will “minimize identified impacts” the Final EA should be revised to specifically state the mechanisms by which mitigations will be required, implemented and enforced. *See W. Land Exch. Project v. U.S. Bureau of Land Mgmt.* (D. Nev. 2004) 315 F. Supp. 2d 1068, 1091 (EA inadequate because it “contain[ed] no assurance that any of the mitigation measures that ‘could be employed’ actually will be, and defers ‘further definition’ of the measures and development of funding mechanisms until some unspecified point in the future...[t]he record contains no ‘supporting analytical data,’ [CITATION]...Courts upholding an agency’s reliance on mitigation measures in deciding to forego an EIS have noted at least some details of the proposed plans and made some findings as to their effectiveness, even where those plans were not worked out to the last detail at the moment of decision.”). Here, the Final EA’s identification of mitigation measures and the mechanisms by which they will be enforced lack the requisite details to ensure that they will be effective, and should thus be modified to be better developed.

VI. Preparation of an EIS is Required

Based on (1) the deficiencies in the EA’s analysis of potentially significant effects on the environment discussed throughout this letter, and (2) the potentially significant effects actually identified in the EAs, an EIS is clearly required for this proposed project. *See High Sierra Hikers Ass’n v. Blackwell* (9th Cir. 2004) 390 F.3d 630, 640 (“If the EA establishes that the agency’s action ‘may have a significant effect upon the environment’ then an EIS must be prepared.”) As discussed throughout this letter, the proposed project will have potentially significant effects on agriculture, biological resources, land use conflicts, cumulative impacts, etc. An EIS should be employed any time, as in the case here, there is a substantial question 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 original).

It is particularly telling that the EAs developed for this project are so extensive. An EA that is of this length and breadth likely indicates that an EIS would be more appropriate. See NEPA’s Forty Most Asked Questions, Question Question 36b (“[a]gencies should avoid preparing lengthy EAs except in unusual cases...[i]n most cases, however, *a lengthy EA indicates that an EIS is needed.*” (emphasis added)).¹⁸ See also NEPA’s Forty Most Asked Questions, Question 36a, stating that EAs are to be “concise” documents that have the following functions:

briefly provides sufficient evidence and analysis for determining whether to prepare an EIS; (2) it aids an agency’s compliance with NEPA when no EIS is necessary, i.e., it helps to identify better alternatives and mitigation measures; and (3) it facilitates preparation of an EIS when one is necessary.¹⁹

These guidance documents also indicate that the “Council [CEQ] has generally advised agencies to keep the length of EAs to not more than approximately 10-15 pages.” *Id.* The length of this proposed project’s EA indicates that this is not the type of project that can be quickly summarized in an EA, but one that should be fully analyzed through an EIS, which provides a more full assessment and analysis of such potentially significant effects of a project. See, e.g., *Anderson*, 371 F.3d at 494, *supra* (lengthy EA still not sufficient when EIS was required):

[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 order to fully address the potentially significant impacts raised in this and other comment letters, and the EA itself, an EIS should be prepared for the proposed project.

¹⁸ BIA NEPA Handbook at 26.

¹⁹ *Id.*

Thank you for your consideration of these comments.

Sincerely,



Linda Krop,
Chief Counsel



Nicole Di Camillo,
Staff Attorney



Brian Trautwein,
Environmental Analyst

cc: Santa Ynez Valley Alliance
Chad Broussard, Environmental Protection Specialist, BIA (*via email*)

Attachments:

Exhibit A – Hunt and Associates Biological Consulting Services, Comments on Final Environmental Assessment for Santa Ynez Band of Chumash Indians Camp 4 Fee-to-Trust, Santa Ynez Valley, Santa Barbara County, California
Exhibit B – Camp 4 Project Analysis of Consistency with Santa Ynez Valley Community Plan Biological Resources Policies

EXHIBIT A

**Lawrence E. Hunt
Consulting Biologist**

Amy Dutschke, Regional Director
Bureau of Indian Affairs, Pacific Regional Office
2800 Cottage Way
Sacramento, California 95825

24 June 2014

Subject: Comments on Final Environmental Assessment for Santa Ynez Band of Chumash Indians Camp 4 Fee-to-Trust, Santa Ynez Valley, Santa Barbara County, California.

Ms. Dutschke,

I have reviewed the Final Environmental Assessment (EA), dated 14 May 2014, for this project, including the Response to Comments, the Final Biological Assessment (BA), dated November 2013, attached as Appendix E, and the Request For Concurrence Letter to the USFWS, attached as Appendix F to the EA. I have the following comments regarding potential project-related impacts to biological resources.

In general, the BIA's responses to comments in the Final EA fall short of addressing deficiencies noted in my previous review letter. The general tone of the responses is "we did an adequate job the first time and no new analyses are required". While the magnitude of impacts may be less under Alternative B (reduced development intensity), there remain significant, unavoidable impacts to individual species, their habitats, and habitat connectivity and wildlife movement associated with either project alternative. These impacts require preparation of an Environmental Impact Statement (EIS).

I will address various Responses to Comments in the order presented in the Final EA:

P996-02, p. 3-194 and P998-26, p. 3-201: Bald eagles could use oak trees on-site as temporary roosts; golden eagles likely forage on-site. Impacts to these, and other federally-regulated species (such as mountain plover), are not adequately analyzed in the Final EA. The stated mitigation measure that nest surveys will be conducted 14 days in advance of construction is ineffective if construction begins outside the nesting season because the project calls for the removal of up to 70 oak trees and placement of residential development in grassland and savanna habitats. Without knowing how birds use the project area during the breeding season, impacts to resident and migratory nesters cannot be adequately assessed. The list of bird species observed on-site during the field surveys for the updated BA lists a fraction of the species that occur on-site as residents or migratory species, as noted in the Santa Barbara Audubon Society letter. Systematic breeding bird surveys (including owl surveys), conducted by a qualified ornithologist and encompassing the breeding season, will provide an accurate environmental baseline from

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which to analyze impacts to avian resources in the project area and nesting and seasonal habitat use by migratory species.

P998-04, p. 3-195 and P998-28, p. 3-202: The response fails to account for the fact that the most of the project area is connected to larger open spaces northeast, southeast, southwest, and south of the project area. Even a casual examination of GoogleEarth imagery reveals that the project area provides a broad habitat connection between foothill regions in the San Rafael Range to the northeast and the Santa Ynez River and foothills of the Santa Ynez Mountains to the south and southwest. The response is based upon a narrow and misleading interpretation of what constitutes dispersal habitat for wildlife and plants. The response assumes, without evidence, that the degraded seasonal drainage that traverses the northwestern portion of the project area is the "...primary mechanism for linking the project site to other habitats located to the north and southwest of the project site." The response goes on to state, "Because it [the project area] is bounded on a majority of sides by non-habitat land uses, the property does not serve to link any other significant natural habitat regions to one another; therefore, no additional wildlife corridors were identified in the EA." Based on this interpretation, mitigation measures aimed at protecting the narrow, degraded seasonal drainages on-site as the only movement corridors completely misses the value of the project area as a whole for wildlife and plant dispersal. A qualified biologist, using tracking cameras strategically placed along drainages and upland areas and monitoring seasonally, would provide an accurate baseline for analyzing potential project-related impacts to wildlife movement and habitat fragmentation.

The latter response states that "Only one wildlife corridor was identified on the project site." What methods were employed to identify that this is a wildlife corridor, and that no others exist on-site? Again, the response assumes that establishing narrow buffer zones around a few seasonal drainages will protect and promote wildlife movement through the site, while completely ignoring the significance of connected, extensive upland habitat in wildlife movement.

P998-12, p. 3-196: The modified BA, dated November 2013, notes that focused botanical surveys were only conducted during a 7-week window in one year (early March and late April 2012), not over three seasons as stated in the Response to Comment. Considering that seasonal precipitation was significantly below average during the 2011/2012 and 2012/2013 rainy seasons, focused surveys should be conducted during at least one season of average or above-average precipitation.

P998-15, p. 3-197: The Tribal Oak Tree Ordinance allows for oak trees to be removed if they interfere with tribal development plans. Additionally, the Ordinance does not include blue oaks, which is the keystone species for oak savanna on-site. Functionally, the Ordinance affords little or no protection to oaks under the proposed development scenarios. Best Management Practices developed for the RMZs for oak woodland on-site (p. 2-6 of Final EA) allows for cutting, trimming, and pruning oak trees, and states that, "...ground disturbance would be limited within the dripline of any oak tree in the zone..." The latter statement appears to allow "limited" ground disturbance within the dripline of oaks, whatever that means. Disturbance within the dripline will disrupt the small feeder roots upon which mature oak trees depend and will disrupt

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recruitment of oaks by disturbing rooted seedlings (acorns). These types of unregulated and unmonitored BMPs will degrade individual oak trees and oak woodland/savanna on-site.

P998-16, p. 3-197: The Final EA, as with the Draft EA and BA, does not describe minimum mapping units for vegetation mapping, but it appears from Figure 3-4 in the Final EA that oak trees in the southern half of the project area that appear in densities comparable to those mapped as oak savanna in the north, are not mapped. Oak savanna does not have to be “dominated by oaks”. By its very definition, grassland is devoid of trees. The presence of a single oak tree changes the nature and use of grassland around that tree. Grassland environments with widely spaced oak trees (oak savanna) provide distinctly different foraging, nesting, and microhabitat opportunities for wildlife compared to grasslands devoid of trees. Figure 3-4 and the analysis of impacts underestimate the extent of oak savanna across the project area. Given that both Alternatives A and B result in significant loss of individual oak trees and fragmentation of existing oak savanna habitat, these project designs should be interpreted as Class I impacts to these resources.

P998-17, p. 3-198 and P998-31, p. 3-203: The response simply repeats the “mitigation” measure. The language is confusing and affords no functional protection for oak resources because it uses words such as “limited” and “whenever feasible”. Limited to what and who decides what is feasible?

The oak tree mitigation program in Section 5.4 of the Final EA falls far short of protecting or enhancing oak resources impacted by either development scenario:

- 70 oak trees are proposed for removal. Routine County and State replacement standards require a minimum 10:1 replacement ratio in order to have any chance of getting a no net loss of oak trees. This would require planting and monitoring survivorship of a minimum of 700 trees. The Final EA and Tribal Oak Tree Ordinance propose no such ratio, just a vague goal of “no net loss” of oak trees.
- A qualified biologist, not a “qualified arborist”, should survey trees that will be removed. Specifically, resident hole-nesting species, such as acorn woodpeckers and bats, may be using trees as permanent nests/roosts, and/or granary trees. Granary trees should be protected because they provide a food storage resource for multiple woodpecker groups. However, because the analyses were limited only to project-related effects on federally-listed species, these types of impacts to non-listed but nonetheless regionally important species were not considered.
- A qualified restoration biologist, not an arborist, should prepare, implement, and monitor any revegetation plan. Arborists are not trained biologists.

Perhaps most importantly, the oak tree mitigation program focuses oak replacement (planting) on a few drainages and vegetated swales and their narrow buffers. What about the broad upland oak savanna habitats and grassland that formerly was savanna but from which trees were removed? On-site savanna habitat currently supports only mature trees (mostly blue oaks) with little or no recruitment as a result of decades of livestock grazing and oak removal. A primary goal of any oak tree mitigation program should be enhancement of existing oak savanna, including

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prohibiting land uses that negatively impact oak survivorship and recruitment. The Tribe should consult with oak woodland and oak savanna experts at the University of California-Santa Barbara and the nearby University of California Sedgwick Preserve to develop a biologically-based oak tree mitigation program that includes enhancement of drainage as well as upland habitats for coast, valley, and blue oaks.

P998-19, p. 3-199: Selecting "...an arborist with acceptable qualifications to fit the Tribe's objectives", hardly sounds like an objective preservation-based approach to oak habitat protection and enhancement. A qualified biologist, not an arborist, should develop oak tree protection plans that not only preserve, but enhances oak savannah and promotes habitat connectivity and long-term stability of this resource. Arborists are not trained biologists and have little or no experience "working with biological resources." The RMZs need to be biologically-based, not developed to present the least interference with development plans.

P998-22, p. 3-199 and 3-200: The response includes the statement that, "Should construction activities be anticipated to occur within 500 feet of the seasonal wetlands, a qualified biologist must be present to demarcate the buffer zone..." This is confusing because elsewhere in the EA, it seems that the purpose of mitigation is to establish buffer areas that are supposed to exclude construction activities. For the proposed mitigation measure to work, a qualified VPFS biologist needs to conduct protocol-level surveys of the entire project area during a year of normal or above-normal precipitation, identify all potential VPFS breeding habitat (including small depressions), then establish a 500-foot exclusion zone around these sites. Ideally, this should occur during conceptual siting and before final siting so that project elements can avoid these features and the 500-foot buffers. The biologist should demarcate all features with construction fencing that would remain in place throughout construction.

The USFWS mapped the Lake Cachuma Critical Habitat Core Area in the vicinity of the project area on the basis of soils and geology that is conducive to seasonal water feature and vernal pool formation. Some of these features may be very small and persist for one or a few seasons, to be replaced as other small depression form elsewhere. Critical habitat designation allows for long-term persistence of VPFS in these core areas by identifying soil and hydrological processes that support depressions and other features used by VPFS for breeding and promoting the long-term temporal stability of local populations at the metapopulation level through habitat connectivity. Simply protecting the tiny, widely disconnected habitat areas identified in the Final EA and stating that the project will only impact "0.15 acre for Alternative A and 0.01 acre for Alternative B" in relation to the 1,400-acre project area is misleading and misses the point of establishing critical habitat in the first place. Again, surveys as described above would permit evaluation of the overall quality and location of VPFS breeding habitat within the mapped critical habitat on-site.

Appendix R of the Final EA is a Request for Concurrence from the USFWS that, by implementing the mitigation measures listed in the EA, there will be no significant adverse effects to VPFS or VPFS habitat. It should be noted here that the Final EA (p. 5-6) includes a mitigation measure that states that, "Should the USFWS determine that even with the mitigation presented in the BA, impacts to VPFS may be significant, the Tribe shall, through passage of a

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Business Committee Resolution, only approve for consideration those site plans that exclude development of residential units within the VPFS designated critical habitat.” Presumably non-residential development, such as roadways and Tribal facilities (Alternative B), would remain. This contingency significantly changes both development scenarios and would require additional analysis to determine the effects of restricting development to the northern half of the project area on biological resources.

P998-25, p. 3-201: The State of California Department of Fish and Wildlife has been petitioned to list the Townsend’s big-eared bat (*Corynorhinus townsendii*) as Endangered in the State of California and is currently conducting inquiries on this matter. Federal actions do not trump State-listed species protection. A known big-eared bat roost occurs within 1.5 miles of the project area. Multi-seasonal, nighttime acoustical surveys of the project area should be conducted to determine where and when particular species, including big-eared bats, are using the site as foraging and/or temporary or permanent roosting habitat. Habitat enhancements, such as bat boxes, properly sited and installed by a qualified bat biologist, should be part of all habitat enhancement efforts on-site.

Impacts of Night-Lighting. The Final EA does not analyze impacts of night-lighting on wildlife use of RMZs and open space areas adjacent to development envelopes. The Visual Resources section of the Final EA provides some mitigation to decrease the effects of night-lighting, such as use of shielding and down-directed lighting. The mitigation should include the Santa Ynez Valley Community Plan Development Standard regarding night-lighting (BIO-SYV-4.2): *Only fully shielded (full cutoff) night lighting shall be used near stream corridors. Light fixtures shall be directed away from the stream channel.* Additionally, the wattage and number of street lights should be reduced to the minimum necessary for public safety. Sodium-arc lamps and other unshielded lights should be prohibited throughout the development.

Review of BIA Letter requesting concurrence from USFWS that project Alternatives A and B will not significantly affect VPFS and CRLF (Appendix R in Final EA). This letter downplays the fact that the entire southern half of the project area falls within designated critical habitat for the VPFS, as well as the fact that field surveys for VPFS and their aquatic habitats were conducted when no water was present on-site. Response to Comment P998-22 on p. 3-200, erroneously states that “...suitable habitat for VPFS is not present on-site.” This statement ignores the fact that the project area supports a significant portion of the Lake Cachuma Critical Habitat Core Area as described in the USFWS Recovery Plan for this species.

Regardless, the Final EA assumes VPFS are present on-site and mitigates on this basis. According to the BIA letter, “...the document [Final EA] has been updated to clarify that no development would occur within the vernal pool (seasonal wetlands and seasonal swale) habitat areas of the project site under Alternatives A and B.” However, VPFS could be present in other on-site depressions and small water features that are evident only when they hold surface water during the rainy season. The surveys likely underestimate the number and extent of seasonal water features on-site that could support VPFS. Protocol-level surveys for VPFS should be conducted in all depressions that hold surface water during a normal or above-normal rainy season.

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Page 5-6 of the Final EA states that, “Should the USFWS determine that even with the mitigation presented in the BA, impacts to VPFS may be significant; the Tribe shall, through passage of a Business Committee Resolution, only approve for consideration those site plans that exclude development of residential units within the VPFS designated critical habitat.” This will effectively restrict development (at least of residential units) to the northern half of the project area, but could result in greater impacts to biological resources in this portion of the project area. Impacts under this scenario have not been analyzed in any document to date.

Statements that the project will have no impact on CRLF are likewise conjectural. CRLF are capable of moving distances in excess of a mile through upland habitat from aquatic sites. While the project area does not appear to support suitable aquatic habitat for CRLF, this species may occur in Santa Agueda Creek and other off-site, man-made ponds (e.g., the large pond located on private property 400-500 feet east of the east-central portion of the project area). The project area is well within the dispersal distance from these sites and drift fence/pitfall trap surveys should be conducted in portions of the project area that lie within a one-mile radius of off-site permanent and intermittent water features where no barriers to on-site dispersal exist.

The characterization of biological resources in the Final EA is based on limited surveys conducted during drought years. The document does not adequately reflect the diversity of plant and animal communities present on-site permanently or seasonally. The conclusions of the Final EA regarding the value of the project area as a major component of the larger mosaic of open space in this region, the type and nature of wildlife “corridors”, and the location and direction of wildlife movements on and through the project area are cursory, with no basis in field study. Most of these deficiencies stem from restricting the analysis of project-related impacts to federally-listed species, per NEPA and Federal ESA allowances. In doing so, the Final EA presents a limited picture of impacts to biological resources. These criticisms, taken together, require that an EIS be prepared in order to analyze impacts to the full spectrum of biological resources in greater detail.

Thank you for your time and the opportunity to comment on the Final EA.

Sincerely,

Lawrence E. Hunt

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EXHIBIT B

Camp 4 Project Analysis of Consistency with Santa Ynez Valley Community Plan Biological Resources Policies

The following analysis evaluates the proposed Project's consistency with the Policies and Development Standards of the Santa Ynez Valley Community Plan ("Plan") which is part of Santa Barbara County's Comprehensive Plan.

- **Policy BIO-SYV-1:** Environmentally sensitive biological resources and habitat areas shall be protected and, where appropriate, enhanced.

Inconsistent. The Camp 4 Project does not protect or enhance environmentally sensitive biological resources and habitats. It allows for reductions in wildlife corridors and oak habitat.¹

- **Action BIO-SYV-1.1:** The following general criteria are used to determine which resources and habitats in the Santa Ynez Valley Planning Area are identified as environmentally sensitive:
 - Unique, rare, or fragile communities which should be preserved to ensure their survival in the future;
 - Habitats of rare and endangered species as protected by State and/or Federal law;
 - Outstanding representative natural communities that have values ranging from particularly rich flora and fauna to an unusual diversity of species;
 - Specialized wildlife habitats which are vital to species survival;
 - Areas structurally important in protecting natural landforms that physically support species (e.g., riparian corridors protecting stream banks from erosion, shading effects of tree canopies);
 - Critical connections between separate habitat areas and/or migratory species' routes; and
 - Areas with outstanding educational values that should be protected for scientific research and educational uses now and in the future, the continued existence of which is demonstrated to be unlikely unless designated and protected.
- **Action BIO-SYV-1.2:** The following biological resources and habitats shall be identified as environmentally sensitive:
 - Santa Ynez River;
 - Streams and creeks (including major tributaries to the Santa Ynez River);
 - Central coastal scrub;
 - Coast live oak woodlands;
 - Valley oak woodland with native grass understory;
 - Valley oak savanna (if five or more acres and unfragmented)
 - Native grasslands; (as defined on page 159)
 - Wetlands;
 - Sensitive native flora; and
 - Critical wildlife habitat/corridors.

¹ See comments on Draft EA, Draft BA and Final EA by Hunt and Associates Biological Consulting Services.

Inconsistent. Under Plan Actions BIO-SYV-1.1 and BIO-SYV-1.2, the Camp 4 Site would be identified with ESH including a major tributary of the Santa Ynez River (Zanja de Cota Creek’s main tributaries), wetlands, critical wildlife habitats and corridors, and valley oak savannah. With the exception of some of the wetlands, which may be protected pursuant to the provisions of the Biological Assessment, portions of the other ESHs would be damaged by the development, including loss and fragmentation of wildlife habitat and corridors, loss of valley oak savannah, and inadequate buffering of the creek ESHs.² In addition, fill of 2.28 acres³ of seasonal wetlands, wetland swales and ephemeral drainages also violates the Plan’s policies and actions.

- **Policy BIO-SYV-2:** The County shall encourage the dedication of conservation or open space easements to preserve important biological habitats. Where appropriate and legally feasible, the County shall require such easements.

Inconsistent. Because the Camp 4 Project fails to cluster the proposed development to preserve important oak savannah habitat, it would not be found consistent with this Policy. An open space conservation easement would be appropriate and legally feasible as mitigation for a project of this intensity in this location. Even with the proposed open space, the Project would fail to protect important habitat areas and would be found inconsistent.

- **Policy BIO-SYV-3:** Significant biological communities shall not be fragmented by development into small, non-viable areas.

Inconsistent. The Project divides the site’s biological resources, fragmenting them into small, less viable habitats.⁴

- **DevStd BIO-SYV-3.1:** Development shall not interrupt major wildlife travel corridors. Typical wildlife corridors include riparian habitats, rivers, streams, and floodplains, and unfragmented areas of grassland, oak woodland, and coastal scrub. Corridors shall allow for wildlife movement. Where practical, options for road undercrossings shall be explored.

Inconsistent. As noted by Hunt and Associates, the site includes significant wildlife movement corridors which would be significantly damaged by the development as proposed. The EA focusses on one small drainage as a wildlife corridor but ignores the site’s “unfragmented areas of grassland” which the Policy notes can be important wildlife corridors.

² See comments on Draft EA, Draft BA and Final EA by Hunt and Associates Biological Consulting Services.

³ 2.52 acres under Alternative B. EA at 4-41

⁴ See comments on Draft EA, Draft BA and Final EA by Hunt and Associates Biological Consulting Services.

- **POLICY BIO-SYV-4:** Sensitive habitats shall be protected to the maximum extent possible, and compensatory mitigation shall be prescribed when impacts to or loss of these areas cannot be avoided. As listed in Action BIO-SYV-1.2, sensitive habitat types include: Riparian, Coastal and Valley Freshwater Marsh, Southern Vernal Pool, Valley Needlegrass Grassland, Coastal Scrub, Coast Live Oak Woodland, Valley Oak Woodland and Savanna, streams and creeks, and wetlands. In addition, federally designated critical habitat for threatened or endangered species shall also be considered to be sensitive habitat. Natural stream corridors (channels and riparian vegetation) shall be maintained in an undisturbed state to the maximum extent feasible in order to protect banks from erosion, enhance wildlife passageways and provide natural greenbelts. Setbacks shall be sufficient to allow and maintain natural stream channel processes (e.g., erosion, meanders) and to protect all new structures and development from such processes. Prior to the approval of a Land Use permit for discretionary projects, County staff will determine whether sensitive biological resources may be present on the subject property by consulting Appendix D, the Santa Ynez Valley Vegetation Map; the CNDDDB; and/or other P&D references. If these resources may be present on the parcel or within 100 feet, the applicant must provide a biological survey report from a qualified biologist that determines whether or not the Project would impact sensitive biological resources. If wetlands, riparian habitats or jurisdictional waters occur on the property, the report would include a wetland delineation following the U.S. Army Corps of Engineers (2006) procedures.

Inconsistent. This Policy requires avoidance of sensitive habitats when feasible and allows for compensatory mitigation only when avoidance is not feasible. The Project however does not avoid or attempt to avoid all sensitive habitats, and instead allows for loss of the sensitive Valley Oak Savannah, wetlands and stream channels in conflict with this Policy. The EA does not analyze whether avoidance is feasible e.g., through clustering of the 143 homes outside of the sensitive habitats. Instead, the EA acknowledges that some of these sensitive habitats will not be avoided, regardless of feasibility, in conflict with this Policy.

The EA does not provide compensatory mitigation for the loss of oak savannah habitat, opting instead to include only a tree replacement measure which does not replace the oak savannah habitat.

The EA apparently only considers 3-parameter wetlands.⁵ It does not appear to consider 1-parameter wetlands, including valley freshwater marshes, which are protected by Policy BIO-SYV-4. As a result, these very sensitive wetland habitats would not be avoided where feasible, and may be destroyed without mitigation in conflict with the Policy.

- **DevStd BIO-SYV-4.1:** Development shall include a minimum setback of 50 feet in the Urban and Inner-Rural areas, 100 feet in the Rural areas, and 200 feet from the Santa Ynez River, from the edge of riparian vegetation or the top of bank whichever is more protective. The setbacks may be adjusted upward or downward on a case-by-case basis

⁵ EA at 3-30.

depending upon site specific conditions such as slopes, biological resources and erosion potential.

Potentially Inconsistent. While a site plan showing location of homes has not been provided and therefore consistency with this Development Standard cannot be ascertained with certainty, the general site plan provided in the EA illustrates residential development in proximity to several streams, raising the concern that the creek setback would not be 100 feet as required by the Development Standard. Homes could be clustered on smaller lots and this would achieve the required setback without reducing the number of homes desired. However, the homes are not clustered and it appears that the Project is potentially inconsistent with this Development Standard.

- **DevStd BIO-SYV-4.2:** Only fully shielded (full cutoff) night lighting shall be used near stream corridors. Light fixtures shall be directed away from the stream channel.

Potentially Inconsistent. The Project Description and EA do not provide adequate detail regarding lighting controls near the creek corridors. The EA includes no mitigation measures to limit lighting along creeks, e.g., as recommended by Hunt and Associates. The EA includes wetland buffers and bird nest buffers – but these only apply to construction activities, not to the proposed structures or light sources. Given the information provided, it is likely that the Project would be found inconsistent with this Development Standard.

- **DevStd BIO-SYV-4.3:** No structures shall be located within a natural stream corridor except: public trails that would not adversely affect existing habitat, dams necessary for water supply projects, flood control projects where no other method for protecting existing structures in the floodplain is feasible and where such protection is necessary for public safety or to protect existing development, and other development where the primary function is for the improvement of fish and wildlife habitat. Culverts, agricultural roads and crossings in rural areas zoned for agricultural use, fences, pipelines and bridges may be permitted when no alternative route or location is feasible. All development shall incorporate the best mitigation measures feasible to minimize the impact to the greatest extent.

Inconsistent. The Plan's Development Standard limits development in natural streams to flood control projects designed to protect existing structures, dams necessary for water supply, and public trails. The Project includes no fewer than nine roads crossing the onsite natural stream corridors and drainages.⁶ Some of the roads would cross drainages on span bridges where necessary to allow water to flow from the site.⁷ However, even if some or all of these roads cross the creeks on span bridges, the structure would still be constructed in and above the stream channel. Moreover, shading of stream habitat caused by the structure in the stream corridor would adversely affect the natural stream corridor habitat. Allowing these roads in the stream corridors would conflict with this Development Standard.

⁶ EA Figure 2-1.

⁷ EA at 4-35.

- **DevStd BIO-SYV-4.5:** To protect Coastal and Valley Freshwater Marsh, Southern Vernal Pool, and other types of wetland habitats, land use development proposals shall include a minimum setback of 50 feet in the Urban and Inner-rural areas and 100 feet in the Rural areas unless this would preclude reasonable use of the outer edge of the habitat and can be adjusted on a case-by-case basis depending on the quality of the habitat and the presence of special status species or other sensitive biological resources.

Potentially Inconsistent. The EA and BA include no measures which would require any permanent setback for development. While the BA would require temporary, 500-foot buffers for construction near wetlands, the BA allows development within this buffer with no permanent setback from wetlands. Therefore, pending a site plan depicting minimum 100-foot permanent wetland buffers, the Project would be found inconsistent with this Development Standard.

- **DevStd BIO-SYV-4.6:** To protect Valley Needlegrass Grassland, Coastal Scrub and oak woodland habitats, development shall include a minimum setback of 15 feet in the Urban and Inner-rural areas and 30 feet in the Rural areas. The setbacks can be adjusted on a case-by-case basis depending on the quality of the habitat and the presence of special status species or other sensitive biological resources unless this would preclude reasonable use of property. The establishment of setbacks shall consider CalFire clearance requirements to ensure that these habitats are not disturbed as a result of clearance requirements.

Potentially Inconsistent. This Development Standard requires a setback from oak woodland habitats, but does not appear to require a setback from oak savannah habitats. The Project does not include a setback from the oak savannah habitat. However, if the Development Standard were interpreted to require a setback from oak savannah habitat, the Project would be found inconsistent.

- **DevStd BIO-SYV-4.8:** If the presence of Valley Needlegrass Grassland, Coastal Scrub, Live Oak Woodland, and Valley Oak Woodland and Savanna habitats are confirmed by the biological survey, prior to the issuance of a Land Use permit for discretionary projects, the applicant shall submit a restoration plan that details compensatory mitigation for any impacts to or loss of such habitats. Compensatory mitigation will be at a ratio prescribed by the County consistent with the County's Deciduous Oak Tree Protection Ordinance, if applicable, and otherwise shall be at least 2:1 (acreage of habitat created: acreage of habitat lost). The restoration plan shall be prepared by a qualified biologist and describe on- or off-site mitigation areas, number of plants to be planted and source of planting stock, planting and maintenance schedule, and success criteria. The County shall approve the length of the performance monitoring period and methods to ensure that success criteria are met. If suitable mitigation areas are not available, the applicant may contribute funds, at an amount approved by the County, to a conservation fund such as the Oak Woodlands Conservation Fund.

Inconsistent. The Project proposes to remove 50 individual oak trees to accommodate development.⁸ These trees are part of the environmentally sensitive Valley Oak Savannah habitat. This Development standard requires a 2:1 replacement of Valley Oak Savannah. The Project does not include a Valley Oak Savannah habitat restoration plan as recommended by Hunt and Associates and as required by this Development Standard. Therefore the Project is inconsistent with this Development Standard.

- **Policy BIO-SYV-5:** Pollution of the Santa Ynez River, streams and drainage channels, underground water basins and areas adjacent to such waters shall be minimized.

Potentially Inconsistent. The Project would include a wastewater treatment plant which would discharge treated effluent. “Treated effluent would be recycled and applied to land on the parcels to be taken into trust and so impacts to water quality would be less than significant.”⁹ (sic) Effluent would enter local streams (which flow into the Santa Ynez River) by overland flow during precipitation events with saturated soil conditions when effluent cannot physically percolate into the soil as envisioned in the EA. However, the EA does not provide adequate details to assess the effectiveness of the plant at minimizing surface water and groundwater pollution, e.g., the quality of effluent water, and the ability of the soil to absorb effluent water during saturated soil conditions so that effluent does not run off into creeks and subsequently the river. Therefore, pending more information about the wastewater treatment and effluent disposal, the Project would be found inconsistent with Policy BIO-SYV-5.

- **Policy BIO-SYV-8:** Native protected trees and non-native specimen trees shall be preserved to the maximum extent feasible. Non-Native specimen trees are defined for the purposes of this policy as mature trees that are healthy and structurally sound and have grown into the natural stature particular to the species. Native or non-native trees that have unusual scenic or aesthetic quality, have important historic value, or are unique due to species type or location shall be preserved to the maximum extent feasible.
- **DevStd BIO-SYV-8.2:** Development shall be sited and designed at an appropriate size and scale to avoid damage to native protected trees (e.g., sycamore, cottonwood, willow, etc.), non-native roosting and nesting trees, and non-native protected trees by incorporating buffer areas, clustering, or other appropriate measures. Mature protected trees that have grown into the natural stature particular to the species should receive priority for preservation over other immature, protected trees. Where native protected trees are removed, they shall be replaced in a manner consistent with County standard conditions for tree replacement.

Inconsistent. Some of the trees onsite are over 200 years old. It is feasible to avoid damage to and loss of the specimen trees on the site simply by clustering homes closer together. As planned however the Project does not seek to cluster development to avoid native specimen

⁸ EA at 4-40.

⁹ EA at 4-35.

trees, as recommended by Hunt and Associates, and would remove 50 or more oak trees¹⁰ many of which are unique, historic and specimen oak trees, and would replace them with seedlings or saplings in conflict with this Policy and Development Standard.

- **Policy BIO-SYV-9:** Trees serving as known raptor nesting sites or key raptor roosting sites shall be preserved to the maximum extent feasible.
- **DevStd BIO-SYV-9.1:** A buffer (to be determined on a case-by-case basis) shall be established around trees serving as raptor nesting sites or key roosting sites.

Potentially Inconsistent. Until pre-construction surveys are completed, it will not be known whether the Project would remove raptor nest or roost sites, or would adequately buffer nest or roost sites. Hunt recommends “point-count surveys, conducted at different times of the year” as necessary to ascertain impacts to nesting raptors.¹¹ Given the Project’s proposed removal of several dozen mature oak trees, it is potentially inconsistent with this Policy pending pre-construction avian surveys.

- **Policy BIO-SYV-14:** Where sensitive plant species and sensitive animal species are found pursuant to the review of a discretionary project, efforts shall be made to preserve the habitat in which they are located to the maximum extent feasible. For the purpose of this policy sensitive plant species are those species which appear on a list in the California Native Plant Society’s Inventory of Endangered Vascular Plants of California. Sensitive animal species are those listed as endangered, threatened or candidate species by the California Department of Fish and Game and the U.S. Fish and Wildlife Service.
- **DevStd BIO-SYV-14.1:** Efforts shall be made to avoid and preserve the habitat in which sensitive plant and animal species are located to the maximum extent feasible. A monitoring plan shall be provided that details on-site biological monitoring to be conducted during construction to ensure that these resources are not impacted during construction.
- **DevStd BIO-SYV-14.2:** Where sensitive plant species populations cannot be avoided, the applicant shall submit to the County a compensatory mitigation plan. This plan shall include measures to establish the species to be impacted in suitable habitat on-site or at an off-site location in the project vicinity. Collection of seeds or propagules from the area to be impacted shall be conducted. Habitat enhancement of on-site areas containing these species can be used in lieu of, or in concert with, planting new areas. The plan shall contain success criteria and a monitoring plan to ensure the establishment of these species. A County-designated conservation bank may be established for projects in which compensatory mitigation cannot be performed on-site.
- **DevStd BIO-SYV-14.3:** Areas containing sensitive plant species listed on the CNPS List 1B that will be avoided, and those areas which will be planted or enhanced, shall be

¹⁰ Hunt and Associates comments on Final EA at 1 noting potential for removal of 70 oak trees.

¹¹ Lawrence E. Hunt Consulting Biologist comments on draft EA. October 3, 2013.

protected by a minimum buffer of 25 feet unless this would preclude reasonable use of property. The applicant shall establish ecologically appropriate conservation easements and provide fencing around any preserved areas.

Inconsistent. The EA does not evaluate impacts to sensitive plant species. Such species occur on site.¹² No effort is made to avoid impacts to such species or their habitats in conflict with this Policy and these Development Standards. The Project can remove populations of special-status plants without any mitigation currently anticipated. This would harm these plant species both onsite through direct removal and offsite on nearby parcels through interference with the populations' ability to pollinate and sustain itself. The Project would therefore conflict with the Development Standards onsite and would impair the County's ability to apply the Plan's Development Standards on adjoining parcels.

- **DevStd BIO-SYV-14.4:** When special status animal species are found for discretionary projects, or if the project may affect nesting birds protected under the Migratory Bird Treaty Act (MBTA), the applicant shall submit to the County a mitigation and monitoring plan that details protections for individuals during construction and compensatory habitat mitigation, if applicable. The mitigation plan shall contain the following elements:
 - Worker environmental training;
 - On-site biological monitoring;
 - Project avoidance and/or minimization measures, including work window restrictions;
 - Habitat protective measures, such as buffer area fencing, spill prevention, sedimentation and erosion control measures, and trash containment guidelines;
 - Pre-construction surveys (including nesting bird surveys), and a species removal and relocation plan (compliance with the federal Endangered Species Act and California Fish and Game Code is required for the handling and relocation of listed species) or methods to avoid individuals and allow them to leave the site on their own, along with exclusionary measures to prevent individuals from returning to the work area;
 - Minimization measures to avoid the introduction and establishment of non-native species;
 - Revegetation plans for temporary impacts to significant habitat areas using native species; and
 - A compensatory mitigation (on- or off-site habitat enhancement or creation) plan, if the County determines that significant habitat areas used by special status animal species will permanently be impacted.

Inconsistent. The EA does not evaluate impacts to non-federal listed species and therefore does not propose avoidance or buffers for such species or their habitats in conflict with this Development Standard. The Project also does not propose to mitigate permanent losses of such species, and therefore conflicts with this Development Standard.

¹² Hunt and Associates Biological Consulting Services comments on Draft EA at pp 1 – 2. October 3, 2013. See also BA Attachment 1.