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SANTA YNEZ VALLEY ALLIANCE

UNITED STATES DEPARTMENT OF THE INTERIOR OFFICE OF HEARINGS AND APPEALS

INTERIOR BOARD OF INDIAN APPEALS

IN RE: (1) DECEMBER 24, 2014 "NOTICE OF DECISION" ACCEPTING INTO TRUST "CAMP 4" PROPERTY, AND (2) OCTOBER 17, 2014 ISSUANCE OF A "FINDING OF NO SIGNIFICANT IMPACT" FOR THE PROPOSED SANTA YNEZ BAND OF CHUMASH INDIANS CAMP 4 FEE-TO-TRUST PROJECT	Docket No: _____ **NOTICE OF APPEAL** 43 C.F.R. Part 4; 25 C.F.R. Part 2

Pursuant to 43 C.F.R. Part 4 and 25 C.F.R. Part 2, the Santa Ynez Valley Alliance appeals (1) the December 24, 2014 NOTICE OF DECISION issued by the Pacific Regional Director of the Bureau of Indian Affairs, accepting into trust for the Santa Ynez Band of Chumash Mission Indians certain property in Santa Barbara County, California, commonly known as the "Camp 4" property; and (2) the October 17, 2014 issuance of a "Finding of No Significant Impact for the Proposed Santa Ynez Band of Chumash Indians Camp 4 Fee-To-Trust Project" and the underlying Final Environmental Assessment.

1. The name and address of Appellant are as follows:
Santa Ynez Valley Alliance, P.O. Box 941, Santa Ynez, CA 93460.
2. The name and address and of Appellant's counsel of record are as follows:
Environmental Defense Center, 906 Garden St., Santa Barbara, CA 93103, Attn. Linda Krop, Chief Counsel and Nicole Di Camillo, Staff Attorney.
3. The decisions being appealed are: (1) the December 24, 2014 NOTICE OF DECISION issued by the Pacific Regional Director of the Bureau of Indian Affairs, accepting into trust for the Santa Ynez Band of Chumash Mission Indians certain property in Santa Barbara County, California, commonly known as the "Camp 4" property[1], totaling approximately 1433 acres; and (2) the October 17, 2014 issuance of a "Finding of No Significant Impact for the Proposed Santa Ynez Band of Chumash Indians Camp 4 Fee-To-Trust Project" and the underlying Final Environmental Assessment.
4. The December 24, 2014 NOTICE OF DECISION is attached hereto as Exhibit A.
5. The October 17, 2014 Notice of Availability and Finding of No Significant Impact are attached hereto as Exhibit B. Exhibits A-G of the Finding of No Significant Impact, and the underlying Final Environmental Assessment and its Exhibits are voluminous and therefore not attached to this Appeal, but are available at http://www.chumashea.com.
6. This Notice of Appeal and attached Statement of Reasons has been served on known interested parties as required by 43 C.F.R. § 4.310(b) and § 4.333(a).

[1] The "Camp 4" Property consists of five parcels containing the following Assessor Parcel Numbers ("APN"): Parcel 1 (APN 141-121-051, and a portion of APN 141-140-010), Parcel 2 (a portion of APN 141-140-010), Parcel 3 (Portions of APNs 141-230-023 and 141-140-010), Parcel 4 (APN 141-240-002 and a portion of APN 141-140-010) and Parcel 5 (A portion of 141-230-023).

7. The attached Certificate of Service includes a Distribution List of known interested parties who were served this Notice of Appeal and attached Statement of Reasons, as required by 43 C.F.R. § 4.332(a)(3).
8. This Notice of Appeal and attached Statement of Reasons has also been served on Amy Dutschke, Pacific Regional Director, Bureau of Indian Affairs, the official from whose decisions the appeal is taken, as required by 43 C.F.R. § 4.333(a), and which is reflected in the attached Certificate of Service.
9. This Notice of Appeal and attached Statement of Reasons has also been served on the Assistant Secretary – Indian Affairs, Kevin Washburn, as required by 43 C.F.R. § 4.332(a) and 25 C.F.R. § 2.20(a), and which is reflected in the attached Certificate of Service.

Respectfully submitted this 2nd day of February, 2015.

/S/ Linda Krop

Linda Krop, Chief Counsel

/S/ Nicole Di Camillo

Nicole Di Camillo, Staff Attorney

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I, Cameron Goodman, declare the following:

1. At the time of service I was at least 18 years old and not a party to this action.
2. I am a resident of the County of Santa Barbara, where the mailing described herein occurred. My business address is 906 Garden St., Santa Barbara, CA 93101.
3. On February 2, 2015, I served the following documents, both dated February 2, 2015:
    1. **Notice of Appeal** IN RE: (1) DECEMBER 24, 2014 "NOTICE OF DECISION" ACCEPTING INTO TRUST "CAMP 4" PROPERTY, AND (2) OCTOBER 17, 2014 ISSUANCE OF A "FINDING OF NO SIGNIFICANT IMPACT" FOR THE PROPOSED SANTA YNEZ BAND OF CHUMASH INDIANS CAMP 4 FEE-TO-TRUST PROJECT
    2. **Statement of Reasons** for Appeal IN RE: (1) DECEMBER 24, 2014 "NOTICE OF DECISION" ACCEPTING INTO TRUST "CAMP 4" PROPERTY, AND (2) OCTOBER 17, 2014 ISSUANCE OF A "FINDING OF NO SIGNIFICANT IMPACT" FOR THE PROPOSED SANTA YNEZ BAND OF CHUMASH INDIANS CAMP 4 FEE-TO-TRUST PROJECT
4. I served the documents on the individuals and agencies:

    SEE ATTACHED DISTRIBUTION LIST.
5. I served the documents via certified U.S. mail.
6. I am not a registered process server and received no fees for service.
7. I declare under penalty of perjury that this information is true and that this declaration was executed on February 2, 2015 in Santa Barbara, California.

Respectfully submitted this 2nd day of February, 2015.

Cameron Goodman

DISTRIBUTION LIST

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INTRODUCTION

Pursuant to 43 C.F.R. Part 4 and 25 C.F.R. Part 2, the Santa Ynez Valley Alliance ("Alliance") appeals (1) the December 24, 2014 NOTICE OF DECISION ("NOD") issued by the Pacific Regional Director of the Bureau of Indian Affairs ("BIA"), accepting into trust for the Santa Ynez Band of Chumash Mission Indians certain property in Santa Barbara County, California, commonly known as the "Camp 4" property; and (2) the October 17, 2014 issuance of a "Finding of No Significant Impact [FONSI] for the Proposed Santa Ynez Band of Chumash Indians Camp 4 Fee-To-Trust Project" and the underlying Final Environmental Assessment ("Final EA"). A copy of the NOD is attached hereto as Exhibit A and a copy of the Notice of Availability ("NOA") of the FONSI and the FONSI are attached hereto as Exhibit B.[1]

The Alliance received a copy of the NOD, which cites to and relies on the FONSI and Final EA, on January 5, 2015.[2] The NOD states that the decision can be appealed to the Interior Board of Indian Appeals within 30 days, which the Alliance has timely done. The NOA for the FONSI stated:

> The FONSI is a finding on environmental effects, not a decision to proceed with an action, therefore it cannot be appealed. 25 C.F.R. Part 2.7 requires a 30-day appeal period after the decision to proceed with the action is made before the action may be implemented. Appeal information will be made publicly available when the decision to proceed is made.
> Exhibit B at 1.

The Alliance therefore did not appeal the FONSI following its issuance, but appeals it now via this appeal of the NOD, which incorporates the FONSI and Final EA. The Alliance may appeal this case, as an interested party that is affected by BIA's decision and could be adversely affected by a decision in an appeal. 43 C.F.R. § 4.331; 25 C.F.R. § 2.2. *See Preservation of Los Olivos v. U.S. Dep't of*

[1] Exhibits A-G of the FONSI and the underlying Final EA and its Exhibits are voluminous and therefore not attached to this Appeal, but are available at http://www.chumashea.com.
[2] Exhibit C – USPS Delivery Tracking Confirmation for 7013 2630 0001 5557 9057.

Interior (C.D. Cal. 2008) 635 F. Supp. 2d 1076, 1090 (upholding citizens' groups' interest in challenging fee-to-trust transfer based on environmental and economic concerns, based on "the plain language of [BIA's] very broad and permissive regulations on standing").

IDENTIFICATION OF THE CASE

The Alliance appeals the December 24, 2014 NOD and the October 17, 2014 FONSI and underlying Final EA. The NOD approved the fee-to-trust application submitted by the Santa Ynez Band of Chumash Mission Indians ("Chumash Tribe").

The Chumash Tribe initially submitted its fee-to-trust application for the Camp 4 Property in July, 2013. The Camp 4 Property, owned by the Tribe in fee simple, consists of five parcels: Assessor Parcel Numbers 141-151-051, 141-140-010, 141-230-023, and 141-240-002, totaling approximately 1433 acres in the rural Santa Ynez Valley in Santa Barbara County, California, near the town of Santa Ynez. The Camp 4 Property is located approximately 1.75 miles from the Chumash Reservation and does not border the Reservation. The Camp 4 Property is within the "Santa Ynez Valley Planning Area" of Santa Barbara County, is currently zoned for agriculture in its entirety, and is currently under a Williamson Act Contract[3] until December 31, 2022.

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

[3] The Williamson Act is a state law that offers substantial reductions in property taxes to land owners in exchange for retaining the land in agriculture for at least ten years. Contracts are renewed on a rolling basis. Cal. Gov't Code § 51243—51244.

> [F]ulfill the purpose of the Consolidation and Acquisition Plan by providing housing within the Tribal Consolidation Area to accommodate the Tribe's current members and anticipated growth.
>
> Draft EA at 1-6.

The Chumash Tribe had submitted the Consolidation and Acquisition Plan ("Plan") to the BIA in March 2013, which identified a Tribal Consolidation Area, encompassing approximately 11,500 acres within the Santa Ynez Valley, including the project site of the 2013 EA. The BIA approved the Plan on June 17, 2013. However, the Plan was subsequently withdrawn after the BIA's approval resulted in appeals:

> Several appeals were filed to the Interior Board of Indian Appeals (IBIA) requesting review of the BIA Regional Director's approval of the Plan and TCA. On October 11, 2013, the Tribe withdrew *without prejudice* the approved Plan and corresponding TCA…[t]he Tribe also requested that the BIA dismiss any appeals on the TCA without prejudice. In response to this request, the IBIA dismissed the appeals…[t]he Tribe prepared and submitted a revised trust acquisition application to the BIA excluding the withdrawn Plan and TCA from the purpose and need.
>
> Final EA at 1-5, emphasis added.

After withdrawing the Plan, the Chumash Tribe submitted an amended fee-to-trust application to the BIA for the Camp 4 Property in November 2013. The amended fee-to-trust application was submitted, pursuant to BIA Land Acquisitions regulations (25 C.F.R. Part 151), in brief "for purposes of tribal housing and facilitating tribal self-determination." A Final EA released in May, 2014 reviewed the amended application. The Final EA described two alternatives for the proposed action (Alternatives A and B) and one no-action alternative (Alternative C).

In summary, under both Alternatives A and B, the entire 1433 acres of the Camp 4 Property would be taken into trust. Under Alternative A, 143 five-acre residential lots would be developed; the lots and access roadways would cover over half of the property (approximately 793 acres), and there would be a 50-acre

reduction in vineyard acreage. Under this alternative, 1227 acres of land zoned agriculture would be converted to other, non-agricultural uses—nearly 86% of the property. Final EA at 5. Under Alternative B, 143 one-acre residential lots would be developed; the lots and access roadways would cover approximately 194 acres of the project site; and there would be a 50-acre reduction in vineyard acreage. This Alternative also envisions development of 30 acres of Tribal Facilities (meeting hall, office spaces, 250 parking spaces, etc.). As with Alternative A, 1227 acres—nearly 86%—of the land zoned agriculture would be converted to other, non-agricultural uses. Final EA at 5.

The Alliance submitted timely written comments on the Final EA on July 10, 2014, highlighting inadequacies in the Final EA and raising substantial questions concerning impacts to biological resources, loss of agricultural land, land use conflicts, and cumulative impacts.[4] Despite the fact that the Alliance and others submitted comments that at a minimum raise substantial questions as to the potentially significant impacts of the project, the BIA subsequently issued a FONSI on October 17, 2014, claiming that under either alternative described in the Final EA, the project was "not a federal action significantly affecting the quality of the human environment." FONSI at 1. The BIA then issued its NOD accepting the Camp 4 Property into trust on December 24, 2014.

[4] A copy of the Alliance's comment letter is attached hereto as Exhibit D and will be referred to herein for convenience. The Alliance's comments on the Final EA are incorporated in Exhibit A of the FONSI (Comment Letters Received on the Final EA) at pp. 219 to 251 (Comment Letter P6). The Alliance also commented on the Draft EA. *See* Final EA, Exhibit O: *Comments and Responses to Comments on August 2013 EA* at 1008–1011 (Comment Letter P998).

STATEMENT OF REASONS FOR APPEAL

Pursuant to 25 C.F.R. § 151.10-151.11, the BIA must consider several factors in deciding on this fee-to-trust application for land that is non-contiguous to the existing Chumash Tribe reservation. The BIA has inadequately considered several of these factors, and its decision to accept the property into trust based on insufficient evaluation of these factors was in error. Specifically, BIA failed to adequately consider (1) compliance with NEPA, (2) the location of the land relative to the reservation, and the implications of that location on the local jurisdiction, and (3) potential land use conflicts.

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

Pursuant to 25 C.F.R. § 151.10(h), the BIA must consider the extent to which the environmental review of the proposed project in the fee-to-trust application complies with the National Environmental Policy Act ("NEPA," 42 U.S.C. § 4321 *et seq.*) and its implementing Council on Environmental Quality ("CEQ") regulations (40 C.F.R. Part 1500). *See TOMAC v. Norton* (D.D.C. 2002) 193 F. Supp. 2d 182, 190, *aff'd sub nom. TOMAC, Taxpayers of Michigan Against Casinos v. Norton* (D.C. Cir. 2006) 433 F.3d 852 (holding organization had standing to challenge BIA decision to take land into trust based in part on allegations of NEPA violations, since "[BIA] regulations provide for consideration of land use conflicts and NEPA requirements.")

As described below in detail, the environmental review conducted by BIA was entirely inadequate. An EA is woefully inadequate for a project of this scope and scale, where numerous substantial questions have been raised as to the potentially significant impacts of the project. An Environmental Impact Statement ("EIS") is required to fully analyze the potentially significant impacts of the

proposed project. Unless and until an adequate EIS is developed, the BIA will be unable to satisfy its requirement to consider whether compliance with NEPA was met, and therefore cannot approve the fee-to-trust application.

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

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

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

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

> significant environmental impact and take that impact into consideration. As such, an EIS is more likely to attract the time and attention of both policymakers and the public.

In addition, the substantial questions raised by commenters clearly demonstrate that the potential impacts of the project are controversial. That is, "substantial dispute exists as to the size, nature, or effect" of the project. *Found. for N. Am. Wild Sheep v. U.S. Dep't of Agr.* (9th Cir. 1982) 681 F.2d 1172, 1182. NEPA is clear: when "(t)he degree to which the effects on the quality of human environment are likely to be highly controversial," an EIS is mandated. 40 C.F.R. § 1508.27(b)(4); *Wild Sheep, supra*, 681 F.2d at 1183 (knowledgeable disagreement with EA's conclusions regarding the likely effects of project warranted preparation of an EIS). The BIA erred in failing to prepare an EIS for a project where substantial questions have been raised as to its potential impacts, and where there is clearly controversy regarding the project's potential impacts.

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

Because the proposed project under either alternative would convert approximately 1,227 acres of the property—almost 86%—from an agricultural land use designation to non-agricultural designations, the project clearly results in significant impacts to agriculture. The removal of so many acres of land from agriculture, which conflicts with the Santa Barbara Comprehensive Plan and the Santa Ynez Valley Community Plan ("SYVCP"), both of which protect agriculture, is significant both in context and intensity. The removal of this many acres of land from agriculture, in a region characterized by important statewide, regional and local agricultural resources, is significant in context. Further, agricultural resources on the Camp 4 Property constitute a unique geographical characteristic, potential degradation of which must be fully evaluated through an

EIS. *See Sierra Club, supra*, 843 F.2d at 1193("The standard to determine if an action will significantly affect the quality of the human environment is whether 'the plaintiff has alleged facts which, if true, show that the proposed project *may* significantly degrade some human environmental factor.'") (emphasis in original).

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

The Alliance and others raised numerous substantial questions as to the potential for significant biological impacts of the proposed project. The following issues were raised in depth in the Alliance's comment letter, which *at a minimum* raise substantial questions as to potential significant impacts to biological resources, warranting development of an EIS. *Id.*

1. Impacts to wildlife corridor movements.[5]
2. Impacts to state-protected birds. The Final EA failed to address potential impacts to state-listed species at all, despite evidence submitted that some species are, or may be, present on the project site.[6]
3. Impacts to nesting and roosting birds, including federally-regulated bald eagles, golden eagles and mountain plovers.[7]
4. Impacts to oak trees individually.[8]
5. Impacts to oak savannah habitat (oak trees in large concentrations, constituting a unique habitat).[9]
6. Impacts to wildlife of night lighting on the property.[10]

[5] Exhibit D at 4, 13.
[6] Exhibit D at 6-7.
[7] Exhibit D at 4.
[8] Exhibit D at 5.
[9] Exhibit D at 5, 7.

7. Impacts caused by potential underestimation of species in biological assessment studies, due to botanical surveys being done in below-average rainy seasons.[11]
8. Impacts caused by the Final EA's narrow definition of "wetland," resulting in areas which would otherwise be identified and protected as wetlands by the County or other agencies not being so identified.[12]
9. Impacts caused by a failure of the proposed project to require buffers around wetlands that would protect wetlands from damage caused by development.[13]

The potential for biological impacts raised by the Alliance and its consulting biologist clearly demonstrate that a more complete evaluation of the potential impacts of the proposed project in an EIS is required. When such evidence is raised, an EIS must be prepared. *See Sierra Club, supra*, 843 F.2d at 1193 (holding that an EIS was required where organization demonstrated that timber sales "*may* significantly degrade some human environmental factor" by providing "testimony of conservationists, biologists, and other experts who were highly critical of the EAs and *disputed* the Forest Service's conclusion that there would be no significant effects from logging") (emphasis added). Likewise here, the comments on the Draft and Final EAs are replete with assertions criticizing the conclusions of the BIA and providing evidence that *at a bare minimum* raises substantial questions as to potentially significant impacts to biological resources.

[10] Exhibit D at 5.
[11] Exhibit D at 4.
[12] Exhibit D at 7.
[13] Exhibit D at 8.

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

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

1. Cumulative impacts of the proposed project with other development on nearby tribal land, including (1) a 6.9-acre property owned by the Chumash Tribe which was recently taken into trust, (2) expanded development on the Chumash Tribe's existing reservation, including a major expansion to the casino and hotel, anticipated to bring in an additional 1,200 visitors daily[14], and (3) the potential for other reasonably foreseeable development on the reservation, including for example, redevelopment of existing tribal housing that may no longer be needed for housing after development of the new housing identified in the proposed project.[15]
2. Cumulative impacts of the proposed project and impacts of possible renewal of the TCA Plan.[16]

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

[15] Exhibit D at 15-16.

[16] As described above (page 6) the Chumash Tribe already obtained approval in 2013 of its TCA Plan, identifying 11,500 acres for acquisition within the Santa Ynez Valley. The Plan was only withdrawn "without prejudice," meaning that it could be potentially reinstated at any time. *See also* Exhibit D at 15.

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

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

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

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

[17] Exhibit D at 14-15.

project, BIA inappropriately issued a FONSI. An EIS is required when a project's proposed mitigation measures insufficiently reduce the impacts of the project. *Wild Sheep*, *supra*, 681 F.2d at 1182 (mitigation measures in an EA were insufficient to avoid preparation of an EIS where substantial questions were raised as to the efficacy of the measures in mitigating harm and reducing the impacts of the project to below a level of significance). In *Wild Sheep*, the court held that because the Forest Service "received numerous responses from conservationists, biologists, and other knowledgeable individuals, all highly critical of the EA and all disputing the EA's conclusion that [the project] would have no significant effect[s,]" an EIS was required. *Id*.

Likewise in this case, numerous commenters have raised concerns that proposed mitigation measures are insufficient to reduce the impacts of the project to below a level of significance. The following are issues raised by the Alliance:

a. Identified oak tree mitigation measures are insufficient to reduce impacts to oak trees and oak savanna habitat to below a level of significance.[18]
b. Mitigation measures aimed at mitigating impacts to "Waters of the United States" are insufficient to mitigate impacts to certain wetlands.[19]
c. The Final EA provides insufficient information on potential mitigation required for Vernal Pool Fairy Shrimp by the U.S. Fish and Wildlife Service, which could change the scope of the project.[20]

[18] Exhibit D at 8-9.
[19] Exhibit D at 9-10
[20] Exhibit D at 5.

d. The Final EA incorrectly claims that impacts to sensitive habitats supporting locally rare species would be protected through County mitigation measures, measures which the Final EA claims in other places, will no longer apply after the fee-to-trust transfer.[21]

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

In addition to the fact that substantial questions have been raised as to the potential impacts of the proposed project, alone warranting development of an EIS, the EA itself is inadequate to support a FONSI. Specifically, the Final EA (1) fails to analyze conflicts with existing land use and environmental protection policies, (2) fails to adequately analyze cumulative impacts, and (3) has an insufficient range of alternatives.

i. The Analysis of Impacts is Flawed Because it Fails to Analyze Conflicts with Existing Land Use and Environmental Protection Laws and Policies.

Under NEPA, an EA must accurately describe the affected environment, including the existing physical environment, and existing land use designations and policies. 40 C.F.R. § 1502.15. This description provides the necessary baseline from which to determine the environmental consequences of the project. Although the Final EA mentions existing land use designations and policies, the Final EA fails in many instances to adequately identify the significant impacts of the project caused by potential or actual conflicts with those 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

[21] Exhibit D at 8.

objectives of Federal, regional, State, and local (and in the case of a reservation, Indian tribe) land use plans, policies and controls for the area concerned.").[22]

Instead, the Final 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,[23] analysis of the project's conflicts with local policies and ordinances is a distinct requirement under NEPA, entirely separate from an analysis of project's impact on a local government's ability to apply those policies and ordinances on parcels outside the project boundaries. The Final EA is fundamentally flawed in skirting this requirement under NEPA. *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, and noting that, "NEPA obligations to determine the projected extent of the environmental harm to enumerated resources *before* a project is approved.") (emphasis original). *See also Half Moon Bay Fishermans' Mktg. Ass'n v. Carlucci:*

> 'NEPA clearly requires that consideration of environmental impacts of proposed projects take place *before* [a final decision] is made.' [CITATION]. *Once a project begins, the 'pre-project environment' becomes a thing of the past, thereby making evaluation of the project's effect on pre-project resources impossible. Id.* Without establishing the baseline conditions which exist… there is simply no way to determine what effect the proposed [project]… will have on the environment and, consequently, no way to comply with NEPA.
>
> 857 F.2d 505, 510 (9th Cir. 1988) (emphasis added).

[22] *See also* BIA NEPA Handbook, Appendix 17 at 15-16, discussed *infra*.
[23] For example, biological resource policies that would span the proposed project site and lands outside the project site, cumulative impacts, etc.

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

> 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 questions have been raised concerning the potential adverse effects of harvesting these timber sales, an EIS should have been prepared. [CITATION]. The Forest Service's decision not to do so was unreasonable. Id. at 1177. It failed to account for factors necessary to determine whether significant impacts would occur. Therefore, its decision was not "fully informed and well-considered." [CITATIONS].
>
> 843 F.2d at 1195.

Not unlike *Sierra Club*, the BIA's failure to adequately analyze whether the proposed project might violate local requirements imposed for the protection of the environment makes the EA inadequate. The following discussion provides some examples of how the project does, or could potentially, violate local land use policies.

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

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

> In rural areas, cultivated agriculture shall be preserved and where conditions allow, expansion and intensification should be supported. Lands with both prime and non-prime soils shall be reserved for agricultural uses.
>
> SYVCP at 8, *citing* Santa Barbara County Comprehensive Plan, Land Use Element.

The SYVCP also specifically states that "[l]and designated for agriculture within the Santa Ynez Valley *shall be preserved and protected for agricultural use*" (SYVCP at 8) (emphasis added).

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

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

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

a. 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.[24]

b. The EA fails to address or analyze potential impacts of the proposed project on oak trees and oak savanna habitat caused by conflicts with existing oak tree protection policies.[25]

c. Numerous other actual conflicts or potential conflicts with local policies imposed for the protection of biological resources were identified in the Alliance's comments on the Final EA.[26]

BIA's failure to address the project's numerous potential or actual conflicts with existing state and local laws or policies runs directly counter to NEPA's mandate to assess these factors in determining whether the proposed project will significantly affect the environment. *Sierra Club*, *supra*, 843 F.2d at 1193. The failure to analyze these potential conflicts in the Final EA simply does not provide

[24] Exhibit D at 6-7.
[25] Exhibit D at 7.
[26] *See* Exhibit D's attachment "Exhibit B": *Camp 4 Project Analysis of Consistency with Santa Ynez Valley Community Plan Biological Resources Policies.*

enough information to fully determine what the potential impacts of the project will be. An EIS must be developed that fully analyzes these potential conflicts, thereby informing both the public and BIA as to the full extent of the potential impacts of the project.

ii. The Analysis of Cumulative Impacts is Insufficient.

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

First, the BIA failed to identify and analyze potentially cumulative impacts caused by impacts of the proposed project and other reasonably foreseeable future actions, as it is required to do under NEPA. *See N. Plains*, *supra*, 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].

The BIA has the burden of identifying and analyzing potential future projects that warrant a cumulative effects analysis. *See Te-Moak Tribe, supra,* 608 F.3d at 605 (holding that the burden is on the agency to identify cumulative impacts, stating that Plaintiffs "*need not show what cumulative impacts would occur. To hold otherwise would require the public, rather than the agency, to ascertain the cumulative effects of a proposed action*… Such a requirement would thwart one of the 'twin aims' of NEPA-to 'ensure [ ] that the agency will inform the public that it has indeed considered environmental concerns in its decisionmaking process.' [CITATIONS]…Instead, we conclude that *Plaintiffs must show only the potential for cumulative impact.*") (emphasis added). Accordingly, BIA should have identified cumulative impacts, which it failed to do.

Moreover, even when presented with substantial questions regarding numerous potential cumulative impacts, BIA failed to adequately analyze those potential impacts. As described above, cumulative impacts could occur due to the proposed project and (1) other development on nearby tribal land, e.g., the 6.9-acre property owned by the Chumash Tribe which was recently taken into trust; expanded development on the Chumash Tribe's existing reservation, including an expanded casino and hotel; and other reasonably foreseeable development on the reservation; (2) possible renewal of the TCA Plan; and (3) cumulative impacts of the direct conversion of agricultural land of the proposed project combined with the potential for the indirect effect of encouraging conversion of other local agricultural land.[27]

The Final EA failed to adequately analyze the potential for cumulative impacts associated with this project in conjunction with other potential development and actual expanded development on nearby tribal land, including the

[27] Exhibit D at 14-15.

reservation. For one, BIA is in the process of expanding the Chumash Hotel and Casino on the Chumash Reservation. Second, another Chumash Tribe owned property was recently taken into trust, on which a museum, park, cultural center and offices are planned.[28]

The Final EA also failed to address cumulative impacts that could occur as a result of renewal of 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*, *supra* 668 F.3d at 1078–79. Reinstatement of the TCA Plan is an exceedingly foreseeable possibility that warrants much greater review in light of the potential cumulative impacts of the proposed project combined with the TCA Plan. The fact that the TCA Plan was *already approved* and withdrawn without prejudice makes it much less speculative that it could be reinstated, warranting consideration of the cumulative impacts of the two projects together. *See Te-Moak*, *supra*, 608 F.3d at 607 (holding that an EA's cumulative impacts analysis was inadequate for failing to adequately address the cultural impacts of *reasonably foreseeable* mining activities in the cumulative effects area) (emphasis added).

Finally, the Final EA failed to analyze the potential for cumulative impacts caused by the proposed project's indirect impacts on other local agricultural resources. *See, e.g.*, *TOMAC v. Norton* (D.D.C. 2003) 240 F. Supp. 2d 45, 50, *aff'd sub nom. TOMAC, Taxpayers of Michigan Against Casinos v. Norton* (D.C. Cir. 2006) 433 F.3d 852 (BIA EA for casino development was held inadequate for failing to take the requisite NEPA "hard look" at potential impacts of casino upon *growth and development of local community*, noting "[s]everal courts have struck down FONSI decisions where agencies failed to evaluate the growth-inducing

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

effects of major federal projects in small communities.") Likewise here, the conversion of a large area of land, especially in such a prominent location, from agricultural use to residential and other uses can result in indirect impacts to the rural and agricultural character of the community (e.g., growth-inducing impacts, economic pressure on other local agricultural properties to convert to non-agricultural uses). *See* 40 C.F.R. § 1508.8 ("[indirect impacts] are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include *growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate*…") (emphasis added). The EA should have addressed the potential cumulative impacts of this agricultural land conversion and the indirect effects it may cause.

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

A fundamental problem with the Final EA is that it does not analyze a reasonable range of alternatives. *See Klamath-Siskiyou Wildlands Ctr. v. U.S. Forest Serv.* (E.D. Cal. 2004) 373 F. Supp. 2d 1069, 1088 ("NEPA mandates that an agency consider and discuss the range of all reasonable alternatives to the proposed action…"). 42 U.S.C. § 4332(2)(E); 40 C.F.R. § 1508.9(b). The BIA (1) unreasonably narrowed the purpose of the proposed project, and (2) included two alternatives that have exactly the same impact on agricultural and other resources.

First, while an agency is not required to analyze alternatives that do not meet the purpose and need of the project, "[n]or, however, can the agency narrowly define its purpose and need so as to winnow down the alternatives until only the desired one survives." *Klamath-Siskiyou, supra*, 373 F. Supp. 2d at 1088. The BIA has done exactly this, foreshortening the available alternatives for the project by inaccurately claiming that the primary purpose of the proposed project—to

provide tribal housing—can in no way be accomplished without the fee-to-trust transfer.[29] The Final EA fails to analyze alternatives that would accomplish residential development without a fee-to-trust transfer, e.g., housing allowed under existing County jurisdiction[30], the possibility of pursuing County processes for rezoning parts of the property that would allow for greater development than is currently allowed, and development or re-development of housing on other existing Chumash Tribe land, including the Chumash reservation.

The range of alternatives is also inadequate due to the fact that the impacts to agricultural resources are the same for both Alternatives A and B. One of the major impacts of the proposed project is the conversion of 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.

This narrow range of alternatives fails to satisfy NEPA's requirement that a reasonable range of alternatives be analyzed. Based on impacts to agriculture and other significant impacts of the proposed project, the BIA should develop an EIS

[29] "[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." Final EA at 2-1.

[30] Under existing zoning, the parcels could be developed with "one-family dwelling per lot; plus agricultural employee housing, residential agricultural units, and second units, where allowed…" Santa Barbara County Code § 35.21.050.

that includes additional alternatives that would analyze the possibility of obtaining the project objectives (1) without a fee-to-trust transfer and (2) with less impacts to agricultural resources (e.g., through reduction or clustering of housing development, off-site housing, etc.). *See W. Watersheds Project v. Abbey* (9th Cir. 2013) 719 F.3d 1035, 1050–51 (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—tribal housing—can be met in any way other than a fee-to-trust transfer and in any way that reduces impacts to agricultural and other resources. This does not satisfy NEPA's requirements to analyze a reasonable range of alternatives.

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

Under 25 CFR § 151.10(f), BIA is charged with considering "potential conflicts of land use," which it has failed to do. The proposed project would dramatically change the existing land use on the Camp 4 Property. As discussed above, the current zoning is AG-II-100, which has a minimum parcel size of 100 acres, with one residential dwelling unit allowed per parcel.[31] The areas surrounding the Camp 4 Property are likewise rural and agricultural. The proposed project—consisting of 143 homes in addition to other facilities and infrastructure—would increase development by at least ten times that which is currently allowed under the County's jurisdiction.

The NOD cursorily states that the intended purposes of the project, "tribal housing, land consolidation, and land banking are not inconsistent with the surrounding uses." NOD at 22. This statement is simply incorrect. The NOD fails to discuss, for example, how the amount of housing, density of housing, required roads and infrastructure, parking facilities, etc. compare in scale and density to the surrounding rural area. This acquisition is unlike land acquisitions where the proposed use of the property is similar to or the same as the existing (pre-trust status) use. *See e.g., Cnty. of Charles Mix v. U.S. Dep't of Interior* (8th Cir. 2012) 674 F.3d 898, 904 (upholding BIA's determination under 25 CFR § 151.10(f) that there would not be land use conflicts where "the tribe's usage of the [property] *would not change* after it was placed in trust.") (emphasis added). Unlike in *Charles Mix*, the use of the Camp 4 Property will change dramatically, and in sharp contrast to the surrounding land. BIA has provided an entirely inadequate analysis of this land use conflict.

[31] Santa Barbara County Code § 35.21.050.

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

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

The NOD describes the location of the property relative to state boundaries and simply states that it is "a mere 1.6 miles from the Reservation." NOD at 24. By underplaying the distance between the property and the reservation, and by failing to undergo the requisite scrutinizing and balancing required by 25 C.F.R. § 151.11, the BIA in essence treats the property as if it is on or contiguous to the reservation. The property is not on the reservation or contiguous to the reservation, and the regulations clearly establish additional factors to consider, and scrutiny to undertake in that instance, which BIA has entirely failed to do. *See* 60 FR 32874-01 (June 23, 1995) ("This final rule modifies three existing sections within Part 151 (Land Acquisitions) and *creates a new section which contains additional criteria and requirements…when lands are outside and noncontiguous to the tribes' existing reservation boundaries*) (emphasis added). BIA's failure to undergo this analysis required by the regulations was an improper exercise of its discretion.

RELIEF REQUESTED

Based on the above Notice of Appeal and Statement of Reasons, the Alliance respectfully requests the following relief:

1. That the October 17, 2014 FONSI issued by the Regional Director be overturned and vacated in its entirety as being in violation of NEPA; and
2. That the FONSI and Final EA be remanded to the Regional Director with instructions that the Regional Director prepare an Environmental Impact Statement for the fee-to-trust application that is the subject of the BIA's December 24, 2014 NOTICE OF DECISION; and
3. That the December 24, 2014 NOTICE OF DECISION be overturned and vacated in its entirety based on the failure to adequately address the required regulatory factors and based on its reliance on inadequate environmental review.

Respectfully submitted this 2nd day of February, 2015.

/S/ Linda Krop

Linda Krop

/S/ Nicole Di Camillo

Nicole Di Camillo

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SANTA YNEZ VALLEY ALLIANCE

EXHIBIT A

United States Department of the Interior

IN REPLY REFER TO:

BUREAU OF INDIAN AFFAIRS
Pacific Regional Office
2800 Cottage Way
Sacramento, California 95825

DEC 24 2014

NOTICE OF DECISION

CERTIFIED MAIL-RETURN RECEIPT REQUESTED – 7013 2630 0001 5557 8848

Honorable Vincent P. Armenta
Chairperson, Santa Ynez Band
of Chumash Mission Indians
P.O. Box 517
Santa Ynez, CA 93460

Dear Chairman Armenta:

This is our Notice of Decision for the application of the Santa Ynez Band of Chumash Mission Indians to have the below described property accepted by the United States of America in trust for the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation of California.

Real property in the unincorporated area of the County of Santa Barbara, State of California, described as follows:

PARCEL 1: (APN: 141-121-51 AND PORTION OF APN: 141-140-10)

LOTS 9 THROUGH 18, INCLUSIVE, OF TRACT 18, IN THE COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, AS SHOWN ON THE MAP SHOWING THE SUBDIVISIONS OF THE CANADA DE LOS PINOS OR COLLEGE RANCHO, FILED IN RACK 3, AS MAP 4 IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

THIS LEGAL IS MADE PURSUANT TO THAT CERTAIN CERTIFICATE OF COMPLIANCE RECORDED DECEMBER 5, 2001 AS INSTRUMENT NO. 01-105580 OF OFFICIAL RECORDS.

PARCEL 2: (PORTION OF APN: 141-140-10)

LOTS 1 THROUGH 12, INCLUSIVE, OF TRACT 24, IN THE COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, AS SHOWN ON THE MAP SHOWING THE SUBDIVISIONS OF THE CANADA DE LOS PINOS OR COLLEGE RANCHO, FILED IN

RACK 3, AS MAP 4 IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

THIS LEGAL IS MADE PURSUANT TO THAT CERTAIN CERTIFICATE OF COMPLIANCE RECORDED DECEMBER 5, 2001 AS INSTRUMENT NO. 01-105581 OF OFFICIAL RECORDS.

PARCEL 3: (PORTIONS OF APNS: 141-230-23 AND 141-140-10)

LOTS 19 AND 20 OF TRACT 18 AND THAT PORTION OF LOTS 1, 2, 7, 8, 9, 10, AND 15 THROUGH 20, INCLUSIVE, OF TRACT 16, IN THE COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, AS SHOWN ON THE MAP SHOWING THE SUBDIVISIONS OF THE CANADA DE LOS PINOS OR COLLEGE RANCHO, FILED IN RACK 3, AS MAP 4 IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, THAT LIES NORTHEASTERLY OF THE NORTHEASTERLY LINE OF THE LAND GRANTED TO THE STATE OF CALIFORNIA BY AN EXECUTOR'S DEED RECORDED APRIL 2, 1968 IN BOOK 2227, PAGE 136 OF OFFICIAL RECORDS OF SAID COUNTY.

THIS LEGAL IS MADE PURSUANT TO THAT CERTAIN CERTIFICATE OF COMPLIANCE RECORDED DECEMBER 5, 2001 AS INSTRUMENT NO. 01-105582 OF OFFICIAL RECORDS.

PARCEL 4: (APN: 141-240-02 AND PORTION OF APN: 141-140-10)

LOTS 1 THROUGH 12, INCLUSIVE, OF TRACT 25, IN THE COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, AS SHOWN ON THE MAP SHOWING THE SUBDIVISIONS OF THE CANADA DE LOS PINOS OR COLLEGE RANCHO, FILED IN RACK 3, AS MAP 4 IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

THIS LEGAL IS MADE PURSUANT TO THAT CERTAIN CERTIFICATE OF COMPLIANCE RECORDED DECEMBER 5, 2001 AS INSTRUMENT NO. 01-105583 OF OFFICIAL RECORDS.

PARCEL 5: (PORTION OF APN: 141-230-23)

THAT PORTION OF LOTS 3 AND 6 OF TRACT 16, IN THE COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA, AS SHOWN ON THE MAP SHOWING THE SUBDIVISIONS OF THE CANADA DE LOS PINOS OR COLLEGE RANCHO, FILED IN RACK 3, AS MAP 4 IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, THAT LIES NORTHEASTERLY OF THE NORTHEASTERLY LINE OF THE LAND GRANTED TO THE STATE OF CALIFORNIA BY AN EXECUTOR'S DEED RECORDED APRIL 2, 1968 IN BOOK 2227, PAGE 136 OF OFFICIAL RECORDS OF SAID COUNTY.

THIS LEGAL IS MADE PURSUANT TO THAT CERTAIN CERTIFICATE OF COMPLIANCE RECORDED DECEMBER 5, 2001 AS INSTRUMENT NO. 01-105584 OF OFFICIAL RECORDS.

The subject property encompasses approximately 1427.78 acres, more or less, commonly referred to as Assessor's Parcel Numbers: 141-151-051, 141-140-010, 141-230-023, and 141-240-002.

Note: The total acreage is consistent with the Bureau of Indian Affairs; GIS Cartographer's Legal Description Review dated September 3, 2013.

The Tribe intends to provide tribal housing and supporting infrastructure on a portion of the property. The remainder will continue to be used for economic pursuits (vineyards and a horse boarding stable), as well as for future long range planning and land banking.

Federal Law authorizes the Secretary of the Interior, or his authorized representative, to acquire title on behalf of the United States of America for the benefit of tribes when such acquisition is authorized by an Act of Congress and (1) when such lands are within the consolidation area; or (2) when the tribe already owns an interest in the land; or (3) when the Secretary determines that the land is necessary to facilitate tribal self-determination, economic development, or tribal housing. In this particular instance, the authorizing Act of Congress is the Indian Land Consolidation Act of 1983 (25 U.S.C. § 2202). The applicable regulations are set forth in the Code of Federal Regulations (CFR), Title 25, INDIANS, Part 151, as amended. This land acquisition falls within the land acquisition policy as set forth by the Secretary of the Interior.

The Santa Ynez Reservation was originally established pursuant to Departmental Order under the authority of the Act of January 12, 1891 (26 Stat. 712).

Pursuant to 25 U.S.C. § 478, the Secretary held such an election for the Tribe on December 15, 1934, at which the majority of the Tribe's voters voted to accept the provisions of the Indian Reorganization Act of June 18, 1934[1]. . The Secretary's act of calling and holding this election for the Tribe informs us that the Tribe was deemed to be "under Federal jurisdiction" in 1934. The Haas List tribes are considered to be under federal jurisdiction in 1934.[2]

On September 17, 2013, and again on November 19, 2013 we issued, by certified mail, return receipt requested, notice of and sought comments regarding the proposed fee-to-trust application from the California State Clearinghouse, Office of Planning and Research; Mr. Daniel Powell, Legal Affairs Secretary, Office of the Governor; Sara Drake, Deputy Attorney General, State of California; Office of the Honorable Senator Diane Feinstein; Santa Barbara County Assessor; Santa Barbara County Treasurer and Tax Collector; Santa Barbara County Sheriff's Department; Santa Barbara County Department of Public Works; Santa Barbara County Department of Planning and Development; Chair, Santa Barbara County Board of Supervisors; County Executive Officer, Santa Barbara County; Doreen Far, Third District Supervisor, Santa Barbara County; Kevin Ready, Senior Deputy County Counsel, Santa Barbara County; City of Santa Barbara; Buellton City Hall; City of Solvang; Lois Capps, U.S. House of Representatives; Stand

[1] See "Ten Years of Tribal Government Under I.R.A", United States Services, 1947, at Interior's website at http://www.doi.gov/library/internet/subject/upload/Haas-TenYears.pdf.

[2] See, Shawano County, Wisconsin v. Acting Midwest Regional Director, BIA, 53 IBIA 62 (February 28, 2011) and Stand Up for California, etal, v. U.S. Department of Interior v. North Fork Rancheria of Mono Indians, 919 F. Supp. 2d 51 (January 29, 2013), the District Court for District of Columbia.

Up for California; Santa Ynez Valley Concerned Citizens; Women's Environmental Watch; Santa Ynez Valley Alliance; Santa Ynez Community Service District; Andi Culbertson, Cathy Christian, Attorney at Law, Nielson Merksamer Parrinello Gross & Leoni LLP; Rob Walton; Kathy Cleary; and Superintendent, Southern California Agency.

In response to our notice dated September 17, 2013, we received the following comments:

1. One-thousand sixty-six (1,066) support letters.

2. Letter dated November 7, 2013 from Lois Capps, Member of Congress – received after comment period ended, stating the following:

    - Numerous local issues must be carefully considered and examined by the Bureau of Indian Affairs, including; impacts on future development, the environment, traffic, noise, and public safety; and the Band's historical connections to the Valley, need for housing, and its rights to self-determination and economic development.

3. Letter dated October 31, 2013 from the County of Santa Barbara stating the following:

    - Significant loss of tax revenue;
    - Compatibility with the County's General Plan, Santa Ynez Community Plan, and County land use Regulations;
    - The proposed trust acquisition is "off reservation";
    - There is no need for additional land to be taken into trust;
    - There is a need for an Environmental Impact Statement;
    - The county appealed the approval of the Tribal Consolidation Area (TCA);

4. Letter dated October 30, 2013 from the Ryan A. Smith, Brownstein Hyatt Farber and Schreck stating the following:

    - It is requested that the Bureau take three steps to clarify for all concerned the status of the Tribes pending request for land into trust in accordance with the approval of the Land Consolidation and Acquisition Plan (LCAP);
    - That it be confirmed in writing and announced publicly that, should the Tribe re-submit its TCA Application for approval, the public will be given notice of the submission, and will also be given an opportunity to comment before BIA takes any action on it;
    - Confirm in writing and announce publicly that BIA is ceasing its consideration of the Camp 4 fee-to-trust application and has returned the application to the Tribe; and
    - The EA states that it was prepared on the assumption that, because the Camp 4 lands were within an approved TCA, they were to be "given the same level of scrutiny as land acquisitions on or adjacent to the tribe's reservation," even though the Camp 4 land themselves are all off-reservation lands.

5. Letter received October 23, 2013 from Linda Kastner stating the following:

    - The property is under the Williamson Act which provides lesser property taxes on producing agricultural land;
    - The County should receive $300,000 annually and, if developed, even more funds annually;
    - The Environmental Assessment provided shows a water treatment plant far exceeding the usage of 143 homes planned; and
    - A tribal hall of 80,000 square feet with parking for 400 cars can't even be imagined in a residential, agricultural area. The roads surrounding the area are two lane, narrow roads;

6. Letter dated October 22, 2013 from Susan Jordan, Director, California Coastal Protection Network stating the following:

    - That there were changes to the project since the FTT application was filed;
    - The FTT application is inadequate and the Tribe should present a plan of the anticipated economic benefits; and
    - The requirement of necessity has not been proven.

7. Letter dated October 22, 2013 from M. Andriette Culbertson stating the following:

    - That there were changes to the project since the FTT application was filed;
    - The FTT application is inadequate and the Tribe should present a plan of the anticipated economic benefits; and
    - The requirement of necessity has not been proven.

8. Letter received October 21, 2013 from L.C. Smith stating the following:

    - Concerned about the environmental impact issues;
    - Water issues, both contamination and overuse;
    - It could be a likely location for a bigger gaming operation;
    - Inadequacy of the current roads, impact on traffic and safety;
    - Concerned about the 800 privately owned parcels as well as businesses inside the proposed TCA of which the greater majority by far are non-tribal members; and
    - The lack of consideration for thousands of people who have invested their lives and livelihoods in this location, many for generations, and the thousands more surrounding the TCA seems extremely short sided.

9. Letter dated October 18, 2013 from W.E. Watch, Inc. stating the following:

    - The FTT application was predicated on the TCA. Any further action on the application would consequently require a level of scrutiny for an Off-Reservation FTT application. The application fails to meet the required standard;
    - The presented application fails to meet the "necessity" requirement.

- Property tax loss to Santa Barbara County;
- Impacts on traffic, public safety, noise, etc., were inadequately addressed; and
- The effects of ground water resources and wastewater issues need more in depth scrutiny.

10. Letter dated October 17, 2013 from Santa Ynez Valley Concerned Citizens stating the following:

    - The BIA and the Tribe assert in the EA and FTT application that the Camp 4 parcels are to be processed as an on-reservation acquisition;
    - The Camp 4 parcels may meet an exception under Section 20 of the Indian Gaming Regulatory Act (IGRA) (U.S.C. 2719 (a) (1). This transaction becomes a major federal action and requires an Environmental Impact Statement (EIS);
    - The proposed FTT poses significant jurisdictional conflicts and off-reservation impacts not adequately identified, assessed, or mitigated;
    - The loss of property taxes;
    - The proposed CA does not address necessary mitigations or services paid for at the expense of all County taxpayers;
    - The Tribe has not demonstrated a clearly identified economic need for the FTT. It is absent of showing "immediate need" or "necessity";
    - The Tribe has not demonstrated that trust conveyance is necessary to facilitate tribal self-determination, nor that the need of the land meets the statutory standards of 25 U.S.C. 465;
    - The proposed FTT creates a significant, negative and unnecessary precedent for FTT in California;
    - Once in trust, Tribal Governments may change their development plans for the property negating the value of negotiated mitigations and posing new unmitigated burdens; and
    - The Bureau of Indian Affairs must be equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status.

11. Letter dated October 17, 2013 from Stand Up for California stating the following:

    - The FTT application does not fully address, or adhere to, all the factors in 25 C.F.R. Part 151;
    - This application is inconsistent with the purposes of 25 U.S.C. 465.
    - The Tribal Consolidation Plan (TCA) was approved without notice to affected private owners or affected local governments;
    - The Chumash and the BIA are asserting this is an on-reservation acquisition;
    - The Tribe has not provided a detailed comprehensive economic business plan;
    - A heightened concern that the land use includes gaming;
    - The BIA has ignored the statutory limitations of 25 USC 456 and 25 CFR 151.11;
    - The BIA and the Chumash have ignored the statutory limitations of the California Land Commissions Act of 1851;

- The application is absent of showing "immediate need" or "necessity";
- The Tribe has not stated a clear economic benefit;
- The taking of this land into trust creates many negative impacts on the existing social-cultural, political, and economic systems of the regional area;
- The application, like the EA, fails to disclose the total purpose for which the land will be used;
- The reduction of tax revenue for the Santa Ynez community;
- The Bureau of Indian Affairs must be equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status; and
- Environmental concerns.

12. Letter received October 16, 2013 from Charlotte Lindsay stating that there is no objection to the tribe of Chumash building on their own land if they play by the same rules as the rest of the community.

13. Letter dated October 16, 2013 from A. Barry Cappello, Cappello & Noel, LLP stating the following:

    - Consideration of the FTT application should be stayed pending final determination of the appeals of the Regional Director's TCA approval;
    - There is no question that this property is outside of and not contiguous to the reservation, which requires both 151.10 and the additional factors in 151.11;
    - The Bureau must give greater scrutiny to the purported justifications and potential regulatory conflicts and impacts in an off-reservation acquisition;
    - Whether the TCA was properly approved is the subject of numerous appeals, if it is reversed, the application should be deemed inadequate;
    - There is unexplained long range need;
    - To the extent that the applicant claims a need for additional tribal housing, there is insufficient information on the actual extent or immediacy of that need;
    - The FTT application cannot be considered before a preparation of a full environmental impact statement;

14. Letter dated October 15, 2013 from Kathy Cleary, Preservation of Los Olivos P.O.L.O. Board President stating the following:

    - The Preservation of Los Olivos opposes the FTT application;
    - Several documents are listed that include reasons for opposition, which include litigation on other Santa Ynez applications and the nine appeals on the TCA, comments that were provided on other applications and on the Environmental assessment, and the Santa Ynez Community Plan;
    - The TCA states as its purpose the intent to facilitate future land into federal trust and provides framework for less stringent standards for FTT, and that the TCA could be expanded;
    - The Santa Ynez Band is not entitled to additional land into federal trust;

- The Santa Ynez Band is claiming 1,300 lineal descendants for expansion of their land base; and
- Stated several comments that were made specifically on the Environmental Assessment.

15. Letter dated October 10, 2013 from Santa Ynez Rancho Estates Mutual Water Company, Inc. stating the following:

    - The process used to consider annexation of Camp 4 is based upon a materially false premise: that the TCA has been lawfully approved which includes the subject property;
    - The entire process in this case has been abusive to the public interest;
    - Public records indicate that the BIA has taken three-quarters of a million dollars directly from the Chumash tribe to support their FTT applications;
    - The application fails to demonstrate the required "necessity" for housing;
    - The Chumash claim to "aboriginal lands" is not supported by history or law;
    - The Assertion of need for "land banking" is not supported by law:
    - Neither the County of Santa Barbara nor the State of California can afford the removal of this land from the tax rolls or the jurisdictional conflicts which will certainly arise. These impacts have not been adequately analyzed as required by law; and
    - The cumulative impact on precedent on the State of California must be considered and denied by this reason.

16. Letter dated October 2, 2013 from Peter and Francine Feldmann expressing their grave concern regarding the TT application for property known as Camp 4.

17. Letter dated September 23, 2013 from John and Cynthia Sanger stating the following:

    - Under the provisions of the TCA those who live within the designated 11,500 acres are given no assurance that our surrounding lands and water sources will not be deeply impacted by uncontrolled commercial and residential development; and
    - Objection to the granting of annexation and the TCA plan for the Santa Ynez Valley.

On June 17, 2013, the Bureau of Indian Affairs approved a Land Consolidation Plan for the Santa Ynez Band of Chumash Indians in accordance with 25 CFR § 151.2(h) and § 151.3(a)(1). Although the Plan was in accordance with the Regulations the Tribe agreed to voluntarily withdraw the Plan as a result of concerns from the local community.

In response to our notice dated November 19, 2013, we received the following comments:

1. Letter dated December 28, 2013 from A. Barry Cappello, Cappello & Noel, LLP stating the following:

- The Tribe has not demonstrated that the BIA has the authority to approve the Tribe's application;
- The Tribe was not a "recognized Indian tribe" when the IRA became law on June 18, 1934;
- The Tribe was not "now under Federal jurisdiction" when the IRA became law;
- The Tribe's alleged need and justification for the acquisition is insufficient under the standard of "greater scrutiny" required under 25 C.F.R. § 151.11;
- The revised FTT application must be denied because it inaccurately describes the impacts on relevant political subdivisions, which must be given greater scrutiny and greater weight;
- The revised application continues to rely on an inadequate Environmental Assessment; compliance with NEPA requires an Environmental Impact Statement;
- The revised application does not contain a required business plan;

2. Email dated December 28, 2013 from Bill Krauch states the following:

    - The amended application does not remove the "TCA"/"TCLA" from the basis of the application. The Environmental Assessment relies on the TCA as a basis for the Assessment. If the "TCA" has been removed, then the EA must be completed again;
    - The application being considered an "On-Reservation" request when actually it is "Off-Reservation" and subject to other requirements.

3. Letter dated December 20, 2013 from Rex and Patricia Murphy states the Chumash no longer have any need for more land.

4. Letter dated December 19, 2013 from Santa Ynez Community Service District states that the four items listed in the notice do not affect their district as the Camp 4 property is outside of the Santa Ynez Community Services District's boundaries.

5. Letter dated December 18, 2013 from M. Andriette Culbertson reiterates her comments listed above dated October 22, 2013 and comments on the Environmental Assessment dated September 27, 2013.:

6. Letter dated December 18, 2013 from Santa Ynez Valley Concerned Citizens states that they want to include the following additions to their comments listed above in their letter dated October 17, 2013, along with comments submitted on the Environmental Assessment dated October 4, 2013:

    - Demand that a more rigorous Environmental Impact Survey (EIS) be undertaken before consideration of this application proceeds any further;
    - The Chumash FTT application does not fully address, or adhere to, all the factors in 25 C.F.R. Part 151;

- SYVCC asserts that the BIA has ignored the statutory limitations of 25 USC 465 and 25 CFR 151.11;
- With the vacating of the Tribal Consolidation area, the current application must now be treated as an Off-Reservation acquisition. The re-submitted application and the Environmental Assessment fail to comport with (a) 25 CFR 151.11;
- The current application for trust acquisition fails to provide sufficient scrutiny as to the purposes and needs of the acquisition demanded for an Off-Reservation acquisition; and
- SYVCC is highly skeptical in terms of Land Banking as it appears to underestimate the impact of potential intensive commercial development;
- The Santa Ynez Band has not made any compelling argument to justify the need for this trust acquisition.

7. Letter dated December 17, 2013 from Caryn Cantella requests that great weight be given to the following:

    - The environmental impacts which have not been fully disclosed;
    - The likely traffic and related "event pollution";
    - The unfunded tax burdens that will fall to non-tribal members of the County if Camp 4 is transferred into trust; and
    - The financially sound status of the Chumash, presently and for generations to come.

8. Letter dated December 17, 2013 from Kelly Patricia Burke stating any opposition of any fee-to-trust approval given to the Chumash Band of Mission Indians.

9. Letter dated December 17, 2013 from Sean Wilczak stating any opposition of any fee-to-trust approval given to the Chumash Band of Mission Indians.

10. Letter dated December 17, 2013 from Ryan Williams stating any opposition of any fee-to-trust approval given to the Chumash Band of Mission Indians.

11. Letter dated December 17, 2013 from Erica Williams stating any opposition of any fee-to-trust approval given to the Chumash Band of Mission Indians.

12. Letter dated December 16, 2013 from Santa Ynez Rancho Mutual Water Company, Inc. states the following:

    - The Santa Ynez Rancho Mutual Water Company, Inc. referenced several letters that they would adopt and incorporate and they include: comment letter dated October 4, 2013 on the EA and October 10, 2013 on the Fee-to-Trust application; comment letter dated October 7, 2013 from the County of Santa Barbara on the EA; and comment letter dated October 31, 2013 on the Fee-to-Trust application, legal arguments made in a letter from Governor Schwartzenegger's Legal Affairs Secretary Peter Siggins to Mr. James Fletcher of the BIA dated August 26, 2005;

- Until and unless all references to the Land Consolidation and acquisition Plan have been removed from the application and the associated environmental documents, there should be no action taken on this Fee-to-Trust application;
- An EA is inadequate – NEPA requires a full EIS;
- There has not been any demonstration of any "immediate need" or "necessity" for Indian housing. Tribal members are making $1 million dollars per year each, which is far more than is necessary to obtain housing;
- Approval of this application would violate the purpose and intent of the 1934 Indian Reorganization Act, which sought to help tribes reach self-sufficiency;
- The Tribe does not have a political entitlement to the requested territory;
- Jurisdictional conflicts are massive, wide ranging, and unresolvable;
- The economic impacts of the unfunded demand for government services are massive and unsupportable to the County of Santa Barbara and its residents; and
- The cumulative impacts of this decision on the county and the state have not been analyzed or considered;

13. Letter dated December 16, 2013 from Kathy Cleary, Board President, P.O.L.O., submits supplements to original comments dated December 4, 2013:

    - They bring attention to the Supreme Court Decision Carcieri, Governor of Rhode Island v. Salazar, Secretary of the Interior which stated, National Congress of American Indians (NCAI) argues that the "ILCA independently grants authority under Section 465 for the Secretary to execute the challenged trust acquisition." P.O.L.O. does not agree; and
    - ILCA is the basis for the Santa Ynez Band's Tribal Land Consolidation and Acquisition Plan claiming entitlement to 11,500 acres.

14. Letter received December 16, 2013 from Linda Kastner mentions some general questions in regards to the use, including: whether there is a business plan, what the building and parking spaces will be used for, how the land is supposed to provide housing for some 1,000 descendants, and the maintenance of the roads to be used outside of, but imperative to, this FTT land.

15. Letter dated December 16, 2013 from Gerry B. Shepherd stating their family holds an easement referred to in Schedule B of the title commitment and requests that all valid existing easement rights be retained by the affected party should any FTT application be approved.

16. Letter dated December 15, 2013 from Klaus M. Brown states the following:

    - Oppose the amended/revised FTT application for the same reasons stated in the seven page comment letter on the Environmental Assessment;
    - Oppose this application being considered as "On-Reservation," and states that it does not remove the "TCA/"TLCA" from the basis of the amended application;
    - The EA relies on the "TCA" as a basis of the amended application. The EA must be completed again if the "TCA" has been removed;

- A FTT application for Camp 4 must be submitted under Section 151.11, "Off-Reservation acquisitions," thus subject to the requirement to prepare and disclose a business plan for reasonable foreseeable development;
- Requirements per 25 CFR 151.11(d) call for the inclusion of comments and input from State and local governments regarding regulatory jurisdiction, real property taxes, and special assessments. State and local government comments are not included in the amended application and the local tax impacts are vastly understated; and
- The Indian Reorganization Act of 1934 was premised on a finding of economic necessity for impoverished tribes. Based on the success of the gaming casino and other development investments, the Chumash Tribe has become very wealthy in a short period of time.

17. Letter dated December 9, 2013 from Cheryl Schmit, Director, Stand Up for California states the following:

    Please note that some comments were listed in a letter dated October 17, 2013, above, and are not restated.

    - The EA is inconsistent with the re-submitted application and must be corrected and re-circulated, preferably as a full Environmental Impact Statement (EIS);
    - The Chumash were not affected by the Dawes Act. The Chumash Reservation was not created until December of 1901, well after the impacts of the Dawes Act.
    - An Off-Reservation acquisition requires the Secretary to evaluate additional criteria when the request for land is located outside the reservation or is non-contiguous, give greater scrutiny to the Tribe's justification of anticipated benefits, and greater weight to the concerns raised by local government;
    - The Tribe shall provide a plan which specifies the anticipated economic benefits associated with the proposed use;
    - The FTT application states and restates, the intent is to eliminate the jurisdictional authority of the County of Santa Barbara and the State of California, raises a red flag;
    - The Tribe states that the majority of the land will be "banked" for future use, but the Tribe does not explain what the future use may consist of;
    - There are stated concerns about jurisdictional issues and that these issues remain until there is a comprehensive mutually beneficial agreement that fully addresses the concerns of the County of Santa Barbara and the Santa Ynez Valley residents; and
    - NEPA concerns.

18. Letter dated December 6, 2013 from Kelly B. Gray, Esq. states the following:

    - Chumash must submit an Environmental Impact Statement (EIS);
    - The Chumash must disclose specifics regarding intended use of Camp 4;

- The tax impacts of a "Fee-to-Trust" transfer of Camp 4 are grossly misrepresented; and
- The Indian Reorganization Act of 1934 was premised upon finding economic necessity. The Chumash tribal members each receive financial tribal distributions and benefits valued at $1 million per year. Therefore, the Chumash cannot qualify for any finding of economic necessity.

19. Letter dated December 4, 2013 from Kathy Cleary, Board President, Preservation of Los Olivos (P.O.L.O).

- P.O.L.O. opposes the amended/revised application for the same reasons listed in their letter dated October 15, 2013, noted above;
- The amended application does not remove the "TCA"/"TLCA" from the basis of the application;
- The Environmental Assessment (EA) relies on the "TCA" as a basis of the Assessment. If the TCA has been removed, the EA must be completed again;
- P.O.L.O. objects to this application being considered as "On-Reservation";
- There is no business plan;
- State and local government comments were not submitted with the initial applications and are not included in the amended application;
- P.O.L.O. also objects to the reference and reliance on the "Solicitor's Opinion;
- Questions regarding the housing description by the tribal government; and
- P.O.L.O. rejects the Santa Ynez Band's claim that once the land is in trust, it will no longer be under state and local jurisdiction.

By letter dated May 16, 2014, the Santa Ynez Band's responses for each of the concerns listed above are:

§151.10(a) – The existence of statutory authority for the acquisition and any limitations contained in such authority.

Some commenters insisted that the BIA does not have authority to take land into trust for the Tribe because of the Carcieri v. Salazar, 555 U.S. 379 (2009) ruling by the Supreme Court. The Tribe's application, however, points out that the Department of Interior has already determined that the Tribe was "under Federal Jurisdiction in 1934."[3] Further, the Tribe participated in IRA elections and voted to accept coming under the provisions of the IRA, which the IBIA has held to be dispositive of the fact, and thus the statutory authority for this acquisition is Section 5 of the IRA.[4]

§151.10(b) and (c) – The need of the individual Indian or tribe for additional land; the purposes for which the land will be used.

[3] See Solicitor's Opinion dated May 23, 2012.
[4] Village of Hobart v. Acting Midwest Regional Director 57 IBIA 4 (2013).

Many commenters conflated these two criteria and thus the Tribe responds to the comments to these in one response. The policies set forth in §151.3 are subsumed in the criteria for need and purpose of the acquisition. Thus, it is permissible for the BIA to consider both whether the Tribe already owns an interest in the land and whether the acquisition is necessary to facilitate tribal self-determination, economic development, or Indian housing. As is clear throughout the application, the Tribe's primary goal for the acquisition is housing, but self-determination and economic development also support the need and purpose of the acquisition. Further, neither the statute nor any portion of the regulations talk about "imminent" need as some commenters claim is necessary. While that is not a criterion which the BIA need consider, the Tribe's need for additional lands for housing could certainly be considered "imminent" as 83% of its population is not currently residing on tribal lands.

Many commenters indicated that they felt that the Tribe either did not need all 1400 acres for housing, or were skeptical that the twenty-six acres suitable for residential development on the current Reservation were insufficient for the additional housing. As noted in the application and the Final EA, much of the Tribe's Reservation is highly constrained, which results in limitations in use of all acreage on the Reservation. Further, the majority of the 26 acres of residential capacity on the Reservation is already developed with housing and thus would not be available for development of additional housing for tribal members. The Tribe has a population of 136 members and approximately 1300 lineal descendants with only 17% of their numbers having housing on tribal lands (Final EA Section 1.3). This leaves a need for housing for over 80% of the Tribe's population. Thus there is a need for additional land to provide for continued population growth in the Tribe. Moreover, the Department has recently reaffirmed the need for tribal homelands:

> The acquisition of land in trust is one of the most significant functions that this Department undertakes on behalf of Indian tribes. Placing land into trust secures tribal homelands, which in turn advances economic development, promotes the health and welfare of tribal communities, and helps to protect tribal culture and traditional ways of life.[5]

Some comments assert that the land could be developed in fee or that the Tribe does not need to have the land in trust for its objectives. It has long been held by the IBIA and courts that it is unreasonable to require the Secretary to specify why holding the land in trust is more beneficial for tribes[6]. Or, in other words, "the inquiry is whether the Tribe needs the land, not whether it needs the land to be in trust.[7]"

[5] 79 Fed. Reg. 24648.

[6] See, e.g., Yreka v. Salazar 2011 WL 2433660 (2011).

[7] Thurston County v. Great Plans Regional Director 56 IBIA 296 (2013).

Commenters also raised the issue of the Tribe's current economic status. Many commenters have equated economic need with need for additional lands in trust. However, the IBIA and courts have long held that a tribe need not be suffering financially to need more land in trust. Id. The status of a tribe's economic well-being is not determinative of being able to further the policies of self-determination, self-government and self-sufficiency. Id. Therefore, the Regional Director need not consider the Tribe's economic success in determining whether it has a need for additional land. "The Tribe's financial security or economic success simply is not a relevant consideration."[8]

There were also comments stating that the Tribe did not disclose its purposes for the acquisition; the acquisition would not meet the purposes of the IRA; and that the desire to take land for an unspecified purpose (or "land-banking") was either not recognized in the regulations or did not justify the Tribe's need for additional land. The Tribe's purpose for the acquisition has been specified both in its application and in the Final EA (Final EA Section 1.3). In addition, in a January 21, 2013 community meeting, the Tribe laid out multiple proposed housing plans for the project. These multiple plans were eventually reduced to two alternatives and a no action plan. As the Tribe has repeatedly noted over several years, the primary purpose is to develop housing for its tribal members and lineal descendants. Moreover, the Courts have held that the purposes of the IRA do not restrict the Secretary to acquiring lands only for landless tribes or tribes which have lost land through allotment to reacquire tribal lands[9]. While the regulations do not specifically identify or define "land-banking" the statute and regulations clearly contemplate taking land into trust for future uses. Furthering long-term stability of a tribe has been held to qualify as a sufficient need[10].

Finally, there were comments that the Regional Director should consider that the land might be used for gaming or that the proposed use of the land might change once the land is placed into trust. The commenters, however, failed to cite any specific examples in which the Tribe has placed land into trust for one purpose and thereafter radically changed the use. This is because there were no such incidences to cite. The Tribe further addressed the gaming aspect in its Application and the Final EA,[11] stating that no gaming will occur on these lands. As most commenters now know, the Tribe would not be able to do any gaming on the property until it has completed the Section 20 approval process under IGRA. Since the Tribe does not intend to do gaming on the property, it has not submitted any such application. Therefore, Secretary relies on the Tribe's assurances

[8] Benewah County v. Northwest Regional Director 55 IBIA 281 (2012).
[9] See, e.g., City of Tacoma v. Andrus 457 F.Supp. 342 (1978).
[10] See, e.g., Sauk County v. Department of Interior 2008 WL 2225680 (2008).
[11] Final EA Section 2.2.3.

regarding the proposed use and is not required to speculate about possible or potential uses[12].

§151.10(e) – The impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls.

The County speculated that it could lose as much as $311 million in tax revenues over fifty years assuming the highest development of the property. Many other commenters cited the County comments to assert the same. It is clear, however, that the regulations do not require the BIA to consider a hypothetical "cumulative analysis" of removal of the land from the tax rolls[13]. Moreover, the County fails to note that even at $311 million over fifty years, the amount is still less than 1% of the expected revenues of the County for that period. Instead, the tax loss must be considered in relation to the revenue baseline at the time of the acquisition[14]. Further, while many commenters, including the County, noted that they felt that the availability of services would be limited due to the reduction in tax revenues, not one commenter provided any specific services which would be cut or unavailable due to the loss of these tax revenues. Therefore, none of the commenters provided the BIA with any specific information regarding tax loss to consider, other than a speculative total loss over a period of years. This is not sufficient to show that the loss will have anything other than a minimal impact on the County[15].

Some commenters did acknowledge that the Tribe made attempts to come to an agreement with the County to try to make up some of the shortfall; however the County rejected all such attempts. Moreover, some commenters actually asserted that the Tribe was the largest employer in the County, but failed to acknowledge the benefits to the community that such employment brings, including income taxes, sales tax and potentially property taxes from employees of the Tribe[16]. As is more thoroughly detailed in the Final EA[17] and its responses to comments,[18] the Tribe has provided funding for law enforcement and fire services through agreements, grants and SDF funds, and has been one of the largest donors to schools and other community organizations in the County. These grants, payments, and donations more than offset any loss of tax revenues which might occur with land being placed into trust. Finally, many tribal members continue to pay for off-reservation fee-based services such as water, sewer and medical assistance.

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[12] See, e.g., Yreka v. Salazar, infra.
[13] County of Charles Mix v. USDOI 2011 WL 1303125 (2011).
[14] Thurston County, infra.
[15] Benewah County, infra.
[16] See, e.g., Benewah County, infra.
[17] Final EA Sections 3.9 and 4.1.9
[18] Final EA Appendix O

§151.10(f) – Jurisdictional problems and potential conflicts of land use which may arise.

Many commenters made blanket statements that the proposed development of 143 homes on the 1400 acres would be incompatible with the County General Plan, Santa Ynez Community Plan, and County land use regulations. These commenters failed to provide any specific details regarding how the proposed development would be incompatible and therefore failed to provide the BIA with information to further consider this potential conflict of land use. The County and many other commenters also promoted a seemingly contradictory idea to that of the incompatibility; i.e., that the Tribe could develop its project if the land remained in fee. The implication is that while there may be some potential conflicts between what the Tribe proposes to develop and the County land use rules, there is also a way to allow the development to continue under the County's jurisdiction. Therefore the alleged conflicts must not be that great or insurmountable. The mere fact that the lands would be trust lands, and therefore not under the County's jurisdiction, is not sufficient in itself to find any adverse impacts[19]. Many commenters also expressed a blanket opposition to any lands being placed into trust for the Tribe because it would then no longer be subject to State or local jurisdiction. Again, this is insufficient evidence to thwart the acquisition of the lands.

§151.11 – Where the land is outside of and noncontiguous to the tribe's reservation, the Secretary must consider additional requirements.

Much is made of the fact that many people understood the BIA to be considering the Tribe's application as "on-reservation" lands, however both NOAs issued by the BIA clearly identified that it would evaluate the application by the criteria in 151.10 and 151.11. Much of this confusion came from a clear misunderstanding of the TCA which had been approved for the Tribe. The TCA in no way obligated the BIA to automatically approve any requests from the Tribe for acquisition of lands within that area, despite the fervor it caused. Nevertheless, in an effort to alleviate the concern, the Tribe withdrew the Plan. Many initial comment letters raised the concern of the TCA, and some even appealed the approval to the IBIA. Because the Tribe withdrew the TCA and amended its application to exclude any reference, that issue is no longer valid. Moreover, the IBIA too found that the issue was moot and dismissed all appeals[20]. It did not, however, as some commenters mistakenly asserted, find that the TCA was improper or illegal. Id.

For an off-reservation acquisition, as the distance between the Tribe's reservation and the land to be acquired increases, the BIA shall give greater scrutiny to the Tribe's anticipated benefits and provide greater weight to state and local government concerns regarding the tax rolls and jurisdictional issues. The proposed acquisition is less than two miles from the reservation boundaries, hardly a distance that will require much scrutiny given that

[19] Thurston County, infra.

[20] County of Santa Barbara v. Pacific Regional Director, 58 IBIA 57 (2013).

many commenters claim to have tens of thousands of acres of land in their ownership. The distance between the current reservation and the acquisition lands is far less in distance than a simple walk across the thousands of acres owned by the commenters. Moreover, acquisitions of land fifteen miles or less from reservation boundaries have been routinely accepted by the BIA and upheld by the IBIA and courts[21]. Therefore, so long as the BIA gives adequate weight to the County's concerns, it is not required to deny the application.

Some commenters argued that there was no business plan submitted as required by §151.11(c). The specific language of the regulations says "where land is being acquired for business purposes, the tribe shall provide a plan which specifies the anticipated economic benefits associated with the proposed use." There is no specific form in which the "plan" must be submitted. As discussed earlier, the Tribe presented a PowerPoint presentation to the community in January of 2013. That PowerPoint, which presented diagrams and descriptions of the proposed project, provides substantial information on the Tribe's plans. Further, as the application points out, the discussion of the on-going business operations (the already operational vineyards and the stables) on the property and any potential future development of the vineyards have been thoroughly discussed in both the EA and revised in the Final EA. For instance, the Final EA (Section 2.1.1) notes that for Alternatives A and B the size of the vineyard would be reduced by fifty acres. It should also be noted that the banquet/exhibition hall has also been removed from the proposal under Alternative B. The Final EA also contains detailed discussion of the current on-going operations and their effect or non-effect on the environment, which necessarily entails management of the vineyard and stables. Thus the information contained in the documents should suffice as a plan. The Tribe has noted that both operations are on-going operations on the fee lands and therefore there are no new economic benefits associated with the acquisition. In addition, as the Tribe has repeatedly stated, the primary purpose of acquiring the land is not for economic purposes, but for tribal housing.

While 25 C.F.R. §151.10(h) addresses "the extent to which the applicant has provided information that allows the Secretary to comply with ...NEPA," that is a separate process in which the Tribe has responded to comments on its EA (Final EA Appendix O). Whether an EIS is necessary, or any other specific environmental issues which have already been thoroughly addressed in the Tribe's Final EA and the responses to comments therein (Final EA Appendix O). Thus, the Final EA and its appendices are incorporated by reference herein as though fully set forth.

[21] See, e.g. Christine A. May v. Acting Phoenix Area Director 33 IBIA 125 (1999) and Yreka v. Salazar, infra.

In addition, five (5) opposition letters were received prior to Notice of Application dated September 17, 2013.

Pursuant to 25 CFR 151.10 & 151.11, the following factors were considered in formulating our decision: (1) the need of the tribe for additional land; (2) the purposes for which the land will be used; (3) impact on the State and its political subdivisions resulting from the removal of the land from the tax rolls; (4) jurisdictional problems and potential conflicts of land use which may arise; (5) whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the acquisition of land in trust status; (6) the extent to which the applicant has provided information that allows the Secretary to comply with 516 DM 6, appendix 4, National Environmental Policy Act Revised Implementing Procedures, and 602 DM 2, Land Acquisitions; Hazardous Substances Determinations; (7) The location of the land relative to state boundaries and its distance from the boundaries of the tribe's reservation; (8) where land is being acquired for business purposes, the tribe shall provide a plan which specifies the anticipated economic benefits associated with the proposed use. Accordingly, the following analysis of the application is provided.

Factor 1 - Need for Additional Land

Certain portions of the Tribe's land tenure history are of particular import to this acquisition and therefore bear repeating here. Specifically, the 1897 Quiet Title Action by the Catholic Church ultimately led to the establishment of the Tribe's reservation.

In 1891, Congress passed the Mission Indian Relief Act designed to help those Indians (neophytes/Christianized Indians) who had been associated with and enslaved by the missions. Many of these communities were destitute, since their land had been taken away from them. It was the intent of Congress to send out a commission to investigate the conditions of the Mission Indians and thereafter settle them onto reservations created by the United States, rather than the current lands held by the Catholic Church/Missions. Thus, the Smiley Commission was formed and investigated the plight of the Mission Indians in California.

The Smiley Commission found that the Santa Ynez Indians were primarily living in a village around the Zanja de Cota Creek area on lands they had moved to around 1835 after the secularization of the Mission. It further determined that, although there was abundant evidence of a long period of occupancy of the mission lands, title to the land for a federal reservation could not be obtained through adverse possession. It is clear from the petition by the Bishop of Monterey that the Church and its priests had long considered the mission lands to be "owned" by the Chumash Indians of that mission (Santa Ines). As such, the Indians could not be considered to have been in adverse possession of the land. The Smiley Commission determined that the United States would have to utilize a different mechanism for establishing a federal reservation for the Santa Ynez Chumash.

In order to accomplish this end, the Bishop of Monterey commenced a quiet title action, which was consented to by the United States Government through its local Indian agent. The action concerned about 11,500 acres of the Rancho Canada de los Pinos (College Rancho) grant.

Throughout the pendency of the litigation, the Santa Ynez Chumash continued to assert their right of occupancy and possession to a much greater area of land than was being discussed in negotiations. At various times parcels of land of five acres, fourteen acres, and two hundred acres were proposed as the property to be deeded to the United States for the Santa Ynez Indians. Each of these proposals represented areas which were significantly less than the original Mission lands (held for the local Chumash by the Catholic Church) and the Rancho Canada de los Pinos (the Mission lands as reconfigured by the United States). Ultimately, after settlement of the lawsuit and negotiations, what was transferred to the United States to be held in trust for the Tribe was a mere ninety-nine acres.

The Santa Ynez Band of Chumash Mission Indians is a strong functioning tribal government with many capabilities and a growing economy. These are some of the tools necessary to sustain future generations, increase the Tribal enrollment, and build an ever-stronger functioning Tribe in the future. Another critical element is land as a basic resource. The Santa Ynez Tribal Government, and the life of its members, relies on the highest and best use of its land resources to provide for government infrastructure, housing, service facilities and to generate income and opportunities that contribute to Tribal self-sufficiency. While the Tribe has managed to move ahead on its existing land base, it recognizes the need to acquire more useable land for the Reservation to both develop a portion for housing, as well as land-bank and hold for development by future generations. The proposed action of transferring the land into trust for the benefit of the Tribe will meet the following needs:

1. Provide ample land space to provide for tribal housing for all tribal members and their families.
2. Bring land within the jurisdictional control of the Tribe, meeting the need for consistent planning, regulatory, and development practices under the single jurisdiction of the Tribe.
3. Help meet the Tribal long range needs to establish a greater reservation land base to meet its needs by increasing the reservation by approximately 1400 acres.
4. Help meet the need for a land base for future generations, land-banking, etc.
5. Help to increase the Tribe's ability to exercise self-determination and to expand Tribal government.
6. Help meet the need to preserve cultural resources in the area by returning land to Tribal and DOI control in order to protect Tribal land from dumping, environmental hazards, unauthorized trespass, or jurisdictional conflict.

The current Reservation lands are highly constrained due to a variety of physical, social, and economic factors. A majority of the lands held in Trust for Santa Ynez are located in a flood plain. This land is not suitable for much, if any, development because of flooding and drainage problems. The irregular topography and flood hazards are associated with the multiple creek corridors which run throughout the property resulting in severe limitations of efficient land utilization. The current reservation has a residential capability of approximately 26 acres, or 18%, and an economic development capability of approximately 16 acres, or 11%. The remaining 99 acres, or 71%, of the reservation is creek corridor and sloped areas, which are difficult to impossible to develop. Therefore, the size of the usable portion of the Santa Ynez Reservation amounts to approximately 50 acres, much of which has already been developed.

The Tribe has a population of 136 tribal members and approximately 1300 lineal descendants which it must provide for. Currently, only about 17% of the tribal members and lineal descendants have housing on tribal lands. This trust land acquisition is an integral part of the Tribe's efforts to bring tribal members and lineal descendants back to the Tribe, accommodate future generations, and create a meaningful opportunity for those tribal members and lineal descendants to be a part of a tribal community revitalization effort that rebuilds tribal culture, customs and traditions. In order to meet these goals, the Tribe needs additional trust land to provide housing for tribal members and lineal descendants who currently are not afforded tribal housing.

Undeveloped property is at a minimum within the Santa Ynez Reservation. Lands that are undeveloped are of insufficient size for development. The northern portion of the reservation has the Tribal Health Clinic and Tribal Government facilities, and the remainder of the land utilization is specifically designed to provide residential opportunities for tribal members and lineal descendants. Any further development in the area would be appropriate only for small scale residential enhancements and does not provide sufficient acreage to build the necessary new housing for its members and lineal descendants.

The remaining acreage held in Trust for the Tribe constitutes the southern Reservation. This is a long, narrow parcel of land which at times narrows to only a couple of hundred feet in width. Such narrowness imposes severe constraints on development of the property. Given the limited usable land the Tribe has to work with, it is in need of additional lands for purposes of tribal housing, enhancing its self-determination, beautification of the Reservation and surrounding properties, and protection and preservation of invaluable cultural resources.

Further, placing the property into trust allows the Tribe to exercise its self-determination and sovereignty over the property. Land is often considered to be the single most important economic resource of an Indian tribe. Once the lands are placed under the jurisdiction of the Federal and tribal governments, the tribal right to govern the lands becomes predominant. This is important, as the inherent right to govern its own lands is one of the most essential powers of any tribal government. As with any government, the Tribe must be able to determine its own course in addressing the needs of its government and its members. Trust status for its lands is crucial to this ability.

Specifically, the Tribe must be able to manage and develop its property pursuant to its own interests and goals. If the land were to remain in fee status, tribal decisions concerning the use of the land would be subject to the authority of the State of California and the County of Santa Barbara, impairing the Tribe's ability to adopt and execute its own land use decisions and development goals. Thus, in order to ensure the effective exercise of tribal sovereignty and development prerogatives with respect to the land, trust status is essential.

It is our determination that the Santa Ynez Band has established a need for additional lands to protect the environment and preserve the reservation.

Factor 2 - Proposed Land Use

The Tribe intends to provide tribal housing and supporting infrastructure on a portion of the property. The remainder will continue to be used for economic pursuits (vineyards and a horse boarding stable), as well as for future long range planning and land banking. The property will serve to enhance the Tribe's land base and support tribal housing, infrastructure, and tribal self-determination. Tribal lands also comprise the heart of the non-economic resources of the tribe by serving cultural, spiritual, and educational purposes, among others.

Factor 3 – Impact on State and Local Government's Tax Base

Santa Barbara County would experience a de minimis decrease in the amount of assessable taxes in the County by placing the property into trust and removing it from the County tax rolls. Parcels accepted into federal trust status are exempt from taxation and would be removed from the County's taxing jurisdiction. In the 2012-2013 tax years, the total taxes assessed on the subject parcels were as follows:

141-121-051	$40,401.06
141-140-010	$41,753.30
141-230-023	$595.96
144-240-002	$504.88

The total collectable taxes on the property for 2012-2013 were $83,255.20, which represents far less than 1% of the total which the County expects to generate from property taxes. Therefore, the percentage of tax revenue that will be lost by transferring the land into trust would be insignificant in comparison to the total amount.

It is our determination that no significant impact will result from the removal of this property from the county tax rolls given the relatively small amount of tax revenue assessed on the subject parcel and the financial contributions provided to the local community by the Tribe through employment and purchases of goods and services.

Factor 4 - Jurisdictional Problems and Potential Conflicts of Land Use Which May Arise

Santa Barbara County has current jurisdiction over the land use on the property subject to this application. The County's land use regulations are presently the applicable regulations when identifying potential future land use conflicts. The property is currently zoned AG – II for agricultural uses, with a minimum lot area of 100 acres on prime and non-prime agricultural lands located within the County.

The Tribe does not anticipate that any significant jurisdictional conflicts will occur as a result of transfer of the subject property into trust. The Tribe's intended purposes of tribal housing, land consolidation, and land banking are not inconsistent with the surrounding uses. As such, the County will not have any additional impacts of trying to coordinate incompatible uses. Further, the County would not have the burden of responsibility of maintaining jurisdiction over the Tribal property.

The land presently is subject to the full civil/regulatory and criminal/prohibitory jurisdiction of the State of California and San Diego County. Once the land is accepted into trust and becomes part of the Reservation, the State of California will have the same territorial and adjudicatory jurisdiction over the land, persons, and transactions on the land as the State has over other Indian counties within the State. Under 18 U.S.C. § 1162 and 28 U.S.C. § 1360 (P.L. 83-280), except as otherwise expressly provided in those statutes, the State of California would retain jurisdiction to enforce its criminal/prohibitory law against all persons and conduct occurring on the land.

With respect to impacts to the State and County, the Tribe has consistently been cooperative with local government and service providers to assist in mitigating any adverse effects their activities may cause. For instance, in 2002 the Tribe established an agreement with the Santa Barbara County Fire Department which pays for fire protection; the Tribe also has its own Wild Lands Fire Department. The Tribe has also been able to make generous contributions to the surrounding communities. They have sponsored numerous organizations and events, including youth programs, sports programs, and local emergency service providers such as the Sheriff's Department and Fire Department. For instance, the Tribe also pays for County Sheriff and Fire through the Special Distribution Fund created by the Tribal-State Compact and has donated over $4.5 million to the Sheriff's Department over a 10 year period. Moreover, the Tribe has nearly completed negotiations for a supplemental agreement to fund a full-time position on the Reservation through the Sheriff's Department. Thus the Tribe has made every effort to help mitigate any impacts to County service organizations and hopes to continue to support such community activities and services in the future.

Factor 5 - Whether the Bureau of Indian Affairs is equipped to discharge the additional responsibilities resulting from the acquisition of the land in trust status

Acceptance of the acquired land into Federal trust status should not impose any additional responsibilities or burdens on the BIA beyond those already inherent in the Federal trusteeship over the existing Santa Ynez Reservation. Most of the property is currently vacant and has no forestry or mineral resources which would require BIA management. Tribal housing may require BIA leases and the infrastructure will likely require additional easements to be processed through the BIA. The Tribe has and will continue to maintain the property through its Environmental Department and other appropriate departments. Emergency services to the property are provided by the City and County Fire and Police through agreements between those agencies and the Tribe.

Factor 6 – The extent to which the applicant has provided information that allows the Secretary to comply with 516 DM 1-7, National Environmental Policy Act Revised Implementing Procedures, and 602 DM 2, Land Acquisitions: Hazardous Substances Determination

In accordance with Interior Department Policy (602 DM 2), we are charged with the responsibility of conducting a site assessment for the purposes of determining the potential for and extent of liability from hazardous substances or other environmental remediation or injury. The record includes a negative Phase 1 "Contaminant Survey Checklist" dated March 4, 2014, reflecting that there were no hazardous materials or contaminants.

National Environmental Policy Act Compliance

An additional requirement that has to be met when considering land acquisition proposals is the impact upon the human environment pursuant to the criteria of the National Environmental Policy Act of 1969 (NEPA). The BIA's guidelines for NEPA compliance are set forth in the Bureau of Indian Affairs Manual (59 IAM). An environmental assessment (EA) for the proposed action was distributed for public review and comment for the period beginning August 20, 2013 and noticed to end on September 19, 2013. In response to requests received, the public comment period was extended to October 7, 2013, providing an extension of 19 days. During the extended public comment period, the federal government was partially shut down (from October 1 to October 16, 2013). The Council on Environmental Quality (CEQ) issued guidance regarding NEPA documents under public review during the shutdown that recommended extending any comment period deadlines by a minimum of the period of time equal to the shutdown (16 days). The comment period was therefore extended a second time to November 18, 2013. The EA documents and analyzes potential impacts to land resources, water resources, air quality, biological resources, cultural resources, socioeconomic conditions, resources use patterns (transportation, land use, and agricultural), public services, public health/hazardous materials, and other values (noise and visual resources). A Final EA was prepared and released to the public for review on May 29, 2014. The review period was noticed to end on June 30, 2014. In response to requests received, the review period was extended to July 14, 2014, providing an extension of 15 days. A Finding of No Significant Impact was signed on October 17, 2014 and published on October 22, 2014.

Based on the analysis disclosed in the EA, review and consideration of the public comments received during the review period, responses to the comments, and mitigation measures imposed, the Bureau of Indian Affairs has determined that the proposed Federal action is not a major Federal action significantly affecting the quality of human environment, as defined by NEPA. Therefore, preparation of an Environmental Impact Statement (EIS) is not required.

Factor 7 – The location of the land relative to state boundaries, and its distance from the boundaries of the tribe's reservation

The property is located within the County of Santa Barbara and is approximately 520 miles from the Oregon border, approximately 233 miles from the Nevada border, approximately 307 miles from the Arizona border and approximately 10 miles from the Pacific Ocean. Further, the property lies within the County of Santa Barbara, and lies approximately 23 miles from the City of Santa Barbara. Finally, the property is adjacent to Highway 154 and is a mere 1.6 miles from the Reservation.

Factor 8 – Where land is being acquired for business purposes, the tribe shall provide a plan which specifies the anticipated economic benefits associated with the proposed use.

The Tribe intends to provide tribal housing and supporting infrastructure on a portion of the property. The remainder will be on-going business operations (the already operational vineyards and the stables), for future long range planning and land banking. Both are on-going operations on the fee lands; therefore there are no new economic benefits associated with the acquisition.

Conclusion

Based on the foregoing, we at this time do hereby issue notice of our intent to accept the subject real property into trust. The subject acquisition will vest title in the United States of America in trust for the Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation of California in accordance with the Indian Reorganization Act of 1934 (25 U.S.C. § 465).

Should any of the below-listed known interested parties feel adversely affected by this decision, an appeal may be filed within thirty (30) days of receipt of this notice with the Interior Board of Indian Appeals, U.S. Department of the Interior, 801 N. Quincy St., Suite 300, Arlington, Virginia 22203, in accordance with the regulations in 43 CFR 4.310-4.340 (copy enclosed).

Any notice of appeal to the Board must be signed by the appellant or the appellant's legal counsel, and the notice of the appeal must be mailed within thirty (30) days of the date of receipt of this notice. The notice of appeal should clearly identify the decision being appealed.

If possible, a copy of this decision should be attached. Any appellant must send copies of the notice of appeal to: (1) the Assistant Secretary of Indian Affairs, U.S. Department of Interior 1849 C Street, N.W., MS-3071-MIB, Washington, D.C. 20240; (2) each interested party known to the appellant; and (3) this office. Any notice of appeal sent to the Board of Indian Appeals must certify that copies have been sent to interested parties. If a notice of appeal is filed, the Board of Indian Appeals will notify appellant of further appeal procedures. If no appeal is timely filed, further notice of a final agency action will be issued by the undersigned pursuant to 25 CFR 151.12(b). No extension of time may be granted for filing a notice of appeal.

If any party receiving this notice is aware of additional governmental entities that may be affected by the subject acquisition, please forward a copy of this notice to said party, or timely provide our office with the name and address of said party.

Sincerely,

Regional Director

Enclosure:
43 CFR 4.310, et seq.

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state specifically and concisely the grounds upon which it is based.

(b) *Notice; burden of proof.* The OHA deciding official will, upon receipt of a demand for hearing, set a time and place therefor and must mail notice thereof to all parties in interest not less than 30 days in advance; provided, however, that such date must be set after the expiration of the 60-day period fixed for the filing of the demand for hearing as provided in §4.305(a). At the hearing, each party challenging the tribe's claim to purchase the interests in question or the valuation of the interests as set forth in the valuation report will have the burden of proving his or her position.

(c) *Decision after hearing; appeal.* Upon conclusion of the hearing, the OHA deciding official will issue a decision which determines all of the issues including, but not limited to, a judgment establishing the fair market value of the interests purchased by the tribe, including any adjustment thereof made necessary by the surviving spouse's decision to reserve a life estate in one-half of the interests. The decision must specify the right of appeal to the Board of Indian Appeals within 60 days from the date of the decision in accordance with §§4.310 through 4.323. The OHA deciding official must lodge the complete record relating to the demand for hearing with the title plant as provided in §4.236(b), furnish a duplicate record thereof to the Superintendent, and mail a notice of such action together with a copy of the decision to each party in interest.

§4.306 Time for payment.

A tribe must pay the full fair market value of the interests purchased, as set forth in the valuation report or as determined after hearing in accordance with §4.305, whichever is applicable, within 2 years from the date of decedent's death or within 1 year from the date of notice of purchase, whichever comes later.

§4.307 Title.

Upon payment by the tribe of the interests purchased, the Superintendent must issue a certificate to the OHA deciding official that this has been done and file therewith such documents in support thereof as the OHA deciding official may require. The OHA deciding official will then issue an order that the United States holds title to such interests in trust for the tribe, lodge the complete record, including the decision, with the title plant as provided in §4.236(b), furnish a duplicate record thereof to the Superintendent, and mail a notice of such action together with a copy of the decision to each party in interest.

§4.308 Disposition of income.

During the pendency of the probate and up to the date of transfer of title to the United States in trust for the tribe in accordance with §4.307, all income received or accrued from the land interests purchased by the tribe will be credited to the estate.

CROSS REFERENCE: See 25 CFR part 2 for procedures for appeals to Area Directors and to the Commissioner of the Bureau of Indian Affairs.

GENERAL RULES APPLICABLE TO PROCEEDINGS ON APPEAL BEFORE THE INTERIOR BOARD OF INDIAN APPEALS

SOURCE: 66 FR 67656, Dec. 31, 2001, unless otherwise noted.

§4.310 Documents.

(a) *Filing.* The effective date for filing a notice of appeal or other document with the Board during the course of an appeal is the date of mailing or the date of personal delivery, except that a motion for the Board to assume jurisdiction over an appeal under 25 CFR 2.20(e) will be effective the date it is received by the Board.

(b) *Service.* Notices of appeal and pleadings must be served on all parties in interest in any proceeding before the Interior Board of Indian Appeals by the party filing the notice or pleading with the Board. Service must be accomplished upon personal delivery or mailing. Where a party is represented in an appeal by an attorney or other representative authorized under 43 CFR 1.3, service of any document on the attorney or representative is service on the party. Where a party is represented by more than one attorney, service on any one attorney is sufficient. The certificate of service on an attorney or

representative must include the name of the party whom the attorney or representative represents and indicate that service was made on the attorney or representative.

(c) *Computation of time for filing and service.* Except as otherwise provided by law, in computing any period of time prescribed for filing and serving a document, the day upon which the decision or document to be appealed or answered was served or the day of any other event after which a designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, Federal legal holiday, or other nonbusiness day, in which event the period runs until the end of the next day which is not a Saturday, Sunday, Federal legal holiday, or other nonbusiness day. When the time prescribed or allowed is 7 days or less, intermediate Saturdays, Sundays, Federal legal holidays, and other nonbusiness days are excluded in the computation.

(d) *Extensions of time.* (1) The time for filing or serving any document except a notice of appeal may be extended by the Board.

(2) A request to the Board for an extension of time must be filed within the time originally allowed for filing.

(3) For good cause the Board may grant an extension of time on its own initiative.

(e) *Retention of documents.* All documents received in evidence at a hearing or submitted for the record in any proceeding before the Board will be retained with the official record of the proceeding. The Board, in its discretion, may permit the withdrawal of original documents while a case is pending or after a decision becomes final upon conditions as required by the Board.

§4.311 Briefs on appeal.

(a) The appellant may file an opening brief within 30 days after receipt of the notice of docketing. Appellant must serve copies of the opening brief upon all interested parties or counsel and file a certificate with the Board showing service upon the named parties. Opposing parties or counsel will have 30 days from receipt of appellant's brief to file answer briefs, copies of which must be served upon the appellant or counsel and all other parties in interest. A certificate showing service of the answer brief upon all parties or counsel must be attached to the answer filed with the Board.

(b) Appellant may reply to an answering brief within 15 days from its receipt. A certificate showing service of the reply brief upon all parties or counsel must be attached to the reply filed with the Board. Except by special permission of the Board, no other briefs will be allowed on appeal.

(c) The BIA is considered an interested party in any proceeding before the Board. The Board may request that the BIA submit a brief in any case before the Board.

(d) An original only of each document should be filed with the Board. Documents should not be bound along the side.

(e) The Board may also specify a date on or before which a brief is due. Unless expedited briefing has been granted, such date may not be less than the appropriate period of time established in this section.

§4.312 Decisions.

Decisions of the Board will be made in writing and will set forth findings of fact and conclusions of law. The decision may adopt, modify, reverse or set aside any proposed finding, conclusion, or order of a BIA official or an OHA deciding official. Distribution of decisions must be made by the Board to all parties concerned. Unless otherwise stated in the decision, rulings by the Board are final for the Department and must be given immediate effect.

§4.313 Amicus Curiae; intervention; joinder motions.

(a) Any interested person or Indian tribe desiring to intervene or to join other parties or to appear as amicus curiae or to obtain an order in an appeal before the Board must apply in writing to the Board stating the grounds for the action sought. Permission to intervene, to join parties, to appear, or for other relief, may be granted for purposes and subject to limitations established by the Board. This section will be liberally construed.

(b) Motions to intervene, to appear as amicus curiae, to join additional parties, or to obtain an order in an appeal pending before the Board must be served in the same manner as appeal briefs.

§ 4.314 Exhaustion of administrative remedies.

(a) No decision of an OHA deciding official or a BIA official, which at the time of its rendition is subject to appeal to the Board, will be considered final so as to constitute agency action subject to judicial review under 5 U.S.C. 704, unless made effective pending decision on appeal by order of the Board.

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

(c) The filing of a petition for reconsideration is not required to exhaust administrative remedies.

§ 4.315 Reconsideration.

(a) Reconsideration of a decision of the Board will be granted only in extraordinary circumstances. Any party to the decision may petition for reconsideration. The petition must be filed with the Board within 30 days from the date of the decision and must contain a detailed statement of the reasons why reconsideration should be granted.

(b) A party may file only one petition for reconsideration.

(c) The filing of a petition will not stay the effect of any decision or order and will not affect the finality of any decision or order for purposes of judicial review, unless so ordered by the Board.

§ 4.316 Remands from courts.

Whenever any matter is remanded from any federal court to the Board for further proceedings, the Board will either remand the matter to an OHA deciding official or to the BIA, or to the extent the court's directive and time limitations will permit, the parties will be allowed an opportunity to submit to the Board a report recommending procedures for it to follow to comply with the court's order. The Board will enter special orders governing matters on remand.

§ 4.317 Standards of conduct.

(a) *Inquiries about cases.* All inquiries with respect to any matter pending before the Board must be made to the Chief Administrative Judge of the Board or the administrative judge assigned the matter.

(b) *Disqualification.* An administrative judge may withdraw from a case in accordance with standards found in the recognized canons of judicial ethics if the judge deems such action appropriate. If, prior to a decision of the Board, a party files an affidavit of personal bias or disqualification with substantiating facts, and the administrative judge concerned does not withdraw, the Director of the Office of Hearings and Appeals will determine the matter of disqualification.

§ 4.318 Scope of review.

An appeal will be limited to those issues which were before the OHA deciding official upon the petition for rehearing, reopening, or regarding tribal purchase of interests, or before the BIA official on review. However, except as specifically limited in this part or in title 25 of the Code of Federal Regulations, the Board will not be limited in its scope of review and may exercise the inherent authority of the Secretary to correct a manifest injustice or error where appropriate.

APPEALS TO THE BOARD OF INDIAN APPEALS IN PROBATE MATTERS

SOURCE: 66 FR 67656, Dec. 31, 2001, unless otherwise noted.

§ 4.320 Who may appeal.

(a) A party in interest has a right to appeal to the Board from an order of an OHA deciding official on a petition for rehearing, a petition for reopening, or regarding tribal purchase of interests in a deceased Indian's trust estate.

(b) Notice of appeal. Within 60 days from the date of the decision, an appellant must file a written notice of appeal signed by appellant, appellant's attorney, or other qualified representative as provided in 43 CFR 1.3, with the Board of Indian Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 801 North Quincy Street, Arlington, Virginia 22203. A

statement of the errors of fact and law upon which the appeal is based must be included in either the notice of appeal or in any brief filed. The notice of appeal must include the names and addresses of parties served. A notice of appeal not timely filed will be dismissed for lack of jurisdiction.

(c) Service of copies of notice of appeal. The appellant must personally deliver or mail the original notice of appeal to the Board of Indian Appeals. A copy must be served upon the OHA deciding official whose decision is appealed as well as all interested parties. The notice of appeal filed with the Board must include a certification that service was made as required by this section.

(d) Action by the OHA deciding official; record inspection. The OHA deciding official, upon receiving a copy of the notice of appeal, must notify the Superintendent concerned to return the duplicate record filed under §§ 4.236(b) and 4.241(d), or under § 4.242(f) of this part, to the Land Titles and Records Office designated under § 4.236(b) of this part. The duplicate record must be conformed to the original by the Land Titles and Records Office and will thereafter be available for inspection either at the Land Titles and Records Office or at the office of the Superintendent. In those cases in which a transcript of the hearing was not prepared, the OHA deciding official will have a transcript prepared which must be forwarded to the Board within 30 days from receipt of a copy of the notice of appeal.

[66 FR 67656, Dec. 31, 2001, as amended at 67 FR 4368, Jan. 30, 2002]

§ 4.321 Notice of transmittal of record on appeal.

The original record on appeal must be forwarded by the Land Titles and Records Office to the Board by certified mail. Any objection to the record as constituted must be filed with the Board within 15 days of receipt of the notice of docketing issued under § 4.332 of this part.

§ 4.322 Docketing.

The appeal will be docketed by the Board upon receipt of the administrative record from the Land Titles and Records Office. All interested parties as shown by the record on appeal must be notified of the docketing. The docketing notice must specify the time within which briefs may be filed and must cite the procedural regulations governing the appeal.

§ 4.323 Disposition of the record.

Subsequent to a decision of the Board, other than remands, the record filed with the Board and all documents added during the appeal proceedings, including any transcripts prepared because of the appeal and the Board's decision, must be forwarded by the Board to the Land Titles and Records Office designated under § 4.236(b) of this part. Upon receipt of the record by the Land Titles and Records Office, the duplicate record required by § 4.320(c) of this part must be conformed to the original and forwarded to the Superintendent concerned.

APPEALS TO THE BOARD OF INDIAN APPEALS FROM ADMINISTRATIVE ACTIONS OF OFFICIALS OF THE BUREAU OF INDIAN AFFAIRS: ADMINISTRATIVE REVIEW IN OTHER INDIAN MATTERS NOT RELATING TO PROBATE PROCEEDINGS

SOURCE: 54 FR 6487, Feb. 10, 1989, unless otherwise noted.

§ 4.330 Scope.

(a) The definitions set forth in 25 CFR 2.2 apply also to these special rules. These regulations apply to the practice and procedure for: (1) Appeals to the Board of Indian Appeals from administrative actions or decisions of officials of the Bureau of Indian Affairs issued under regulations in 25 CFR chapter 1, and (2) administrative review by the Board of Indian Appeals of other matters pertaining to Indians which are referred to it for exercise of review authority of the Secretary or the Assistant Secretary—Indian Affairs.

(b) Except as otherwise permitted by the Secretary or the Assistant Secretary—Indian Affairs by special delegation or request, the Board shall not adjudicate:

(1) Tribal enrollment disputes;

(2) Matters decided by the Bureau of Indian Affairs through exercise of its discretionary authority; or

(3) Appeals from decisions pertaining to final recommendations or actions by officials of the Minerals Management Service, unless the decision is based on an interpretation of Federal Indian law (decisions not so based which arise from determinations of the Minerals Management Service, are appealable to the Interior Board of Land Appeals in accordance with 43 CFR 4.410).

§ 4.331 Who may appeal.

Any interested party affected by a final administrative action or decision of an official of the Bureau of Indian Affairs issued under regulations in title 25 of the Code of Federal Regulations may appeal to the Board of Indian Appeals, except—

(a) To the extent that decisions which are subject to appeal to a higher official within the Bureau of Indian Affairs must first be appealed to that official;

(b) Where the decision has been approved in writing by the Secretary or Assistant Secretary—Indian Affairs prior to promulgation; or

(c) Where otherwise provided by law or regulation.

§ 4.332 Appeal to the Board; how taken; mandatory time for filing; preparation assistance; requirement for bond.

(a) A notice of appeal shall be in writing, signed by the appellant or by his attorney of record or other qualified representative as provided by 43 CFR 1.3, and filed with the Board of Indian Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 801 North Quincy Street, Arlington, Virginia 22203, within 30 days after receipt by the appellant of the decision from which the appeal is taken. A copy of the notice of appeal shall simultaneously be filed with the Assistant Secretary—Indian Affairs. As required by § 4.333 of this part, the notice of appeal sent to the Board shall certify that a copy has been sent to the Assistant Secretary—Indian Affairs. A notice of appeal not timely filed shall be dismissed for lack of jurisdiction. A notice of appeal shall include:

(1) A full identification of the case;

(2) A statement of the reasons for the appeal and of the relief sought; and

(3) The names and addresses of all additional interested parties, Indian tribes, tribal corporations, or groups having rights or privileges which may be affected by a change in the decision, whether or not they participated as interested parties in the earlier proceedings.

(b) In accordance with 25 CFR 2.20(c) a notice of appeal shall not be effective for 20 days from receipt by the Board, during which time the Assistant Secretary—Indian Affairs may decide to review the appeal. If the Assistant Secretary—Indian Affairs properly notifies the Board that he has decided to review the appeal, any documents concerning the case filed with the Board shall be transmitted to the Assistant Secretary—Indian Affairs.

(c) When the appellant is an Indian or Indian tribe not represented by counsel, the official who issued the decision appealed shall, upon request of the appellant, render such assistance as is appropriate in the preparation of the appeal.

(d) At any time during the pendency of an appeal, an appropriate bond may be required to protect the interest of any Indian, Indian tribe, or other parties involved.

[54 FR 6487, Feb. 10, 1989, as amended at 67 FR 4368, Jan. 30, 2002]

§ 4.333 Service of notice of appeal.

(a) On or before the date of filing of the notice of appeal the appellant shall serve a copy of the notice upon each known interested party, upon the official of the Bureau of Indian Affairs from whose decision the appeal is taken, and upon the Assistant Secretary—Indian Affairs. The notice of appeal filed with the Board shall certify that service was made as required by this section and shall show the names and addresses of all parties served. If the appellant is an Indian or an Indian tribe not represented by counsel, the appellant may request the official of the Bureau whose decision is appealed to assist in service of copies of the notice of appeal and any supporting documents.

(b) The notice of appeal will be considered to have been served upon the date of personal service or mailing.

§ 4.334 Extensions of time.

Requests for extensions of time to file documents may be granted upon a showing of good cause, except for the time fixed for filing a notice of appeal which, as specified in § 4.332 of this part, may not be extended.

§ 4.335 Preparation and transmittal of record by official of the Bureau of Indian Affairs.

(a) Within 20 days after receipt of a notice of appeal, or upon notice from the Board, the official of the Bureau of Indian Affairs whose decision is appealed shall assemble and transmit the record to the Board. The record on appeal shall include, without limitation, copies of transcripts of testimony taken; all original documents, petitions, or applications by which the proceeding was initiated; all supplemental documents which set forth claims of interested parties; and all documents upon which all previous decisions were based.

(b) The administrative record shall include a Table of Contents noting, at a minimum, inclusion of the following:

(1) The decision appealed from;

(2) The notice of appeal or copy thereof; and

(3) Certification that the record contains all information and documents utilized by the deciding official in rendering the decision appealed.

(c) If the deciding official receives notification that the Assistant Secretary—Indian Affairs has decided to review the appeal before the administrative record is transmitted to the Board, the administrative record shall be forwarded to the Assistant Secretary—Indian Affairs rather than to the Board.

§ 4.336 Docketing.

An appeal shall be assigned a docket number by the Board 20 days after receipt of the notice of appeal unless the Board has been properly notified that the Assistant Secretary—Indian Affairs has assumed jurisdiction over the appeal. A notice of docketing shall be sent to all interested parties as shown by the record on appeal upon receipt of the administrative record. Any objection to the record as constituted shall be filed with the Board within 15 days of receipt of the notice of docketing. The docketing notice shall specify the time within which briefs shall be filed, cite the procedural regulations governing the appeal and include a copy of the Table of Contents furnished by the deciding official.

§ 4.337 Action by the Board.

(a) The Board may make a final decision, or where the record indicates a need for further inquiry to resolve a genuine issue of material fact, the Board may require a hearing. All hearings shall be conducted by an administrative law judge of the Office of Hearings and Appeals. The Board may, in its discretion, grant oral argument before the Board.

(b) Where the Board finds that one or more issues involved in an appeal or a matter referred to it were decided by the Bureau of Indian Affairs based upon the exercise of discretionary authority committed to the Bureau, and the Board has not otherwise been permitted to adjudicate the issue(s) pursuant to § 4.330(b) of this part, the Board shall dismiss the appeal as to the issue(s) or refer the issue(s) to the Assistant Secretary—Indian Affairs for further consideration.

§ 4.338 Submission by administrative law judge of proposed findings, conclusions and recommended decision.

(a) When an evidentiary hearing pursuant to § 4.337(a) of this part is concluded, the administrative law judge shall recommend findings of fact and conclusions of law, stating the reasons for such recommendations. A copy of the recommended decision shall be sent to each party to the proceeding, the Bureau official involved, and the Board. Simultaneously, the entire record of the proceedings, including the transcript of the hearing before the administrative law judge, shall be forwarded to the Board.

(b) The administrative law judge shall advise the parties at the conclusion of the recommended decision of their right to file exceptions or other

comments regarding the recommended decision with the Board in accordance with §4.339 of this part.

§4.339 Exceptions or comments regarding recommended decision by administrative law judge.

Within 30 days after receipt of the recommended decision of the administrative law judge, any party may file exceptions to or other comments on the decision with the Board.

§4.340 Disposition of the record.

Subsequent to a decision by the Board, the record filed with the Board and all documents added during the appeal proceedings, including the Board's decision, shall be forwarded to the official of the Bureau of Indian Affairs whose decision was appealed for proper disposition in accordance with rules and regulations concerning treatment of Federal records.

WHITE EARTH RESERVATION LAND SETTLEMENT ACT OF 1985; AUTHORITY OF ADMINISTRATIVE JUDGES; DETERMINATIONS OF THE HEIRS OF PERSONS WHO DIED ENTITLED TO COMPENSATION

SOURCE: 56 FR 61383, Dec. 3, 1991, unless otherwise noted.

§4.350 Authority and scope.

(a) The rules and procedures set forth in §§4.350 through 4.357 apply only to the determination through intestate succession of the heirs of persons who died entitled to receive compensation under the White Earth Reservation Land Settlement Act of 1985, Public Law 99-264 (100 Stat. 61), amended by Public Law 100-153 (101 Stat. 886) and Public Law 100-212 (101 Stat. 1433).

(b) Whenever requested to do so by the Project Director, an administrative judge shall determine such heirs by applying inheritance laws in accordance with the White Earth Reservation Settlement Act of 1985 as amended, notwithstanding the decedent may have died testate.

(c) As used herein, the following terms shall have the following meanings:

(1) The term *Act* means the White Earth Reservation Land Settlement Act of 1985 as amended.

(2) The term *Board* means the Board of Indian Appeals in the Office of Hearings and Appeals, Office of the Secretary.

(3) The term *Project Director* means the Superintendent of the Minnesota Agency, Bureau of Indian Affairs, or other Bureau of Indian Affairs official with delegated authority from the Minneapolis Area Director to serve as the federal officer in charge of the White Earth Reservation Land Settlement Project.

(4) The term *party (parties) in interest* means the Project Director and any presumptive or actual heirs of the decedent, or of any issue of any subsequently deceased presumptive or actual heir of the decedent.

(5) The term *compensation* means a monetary sum, as determined by the Project Director, pursuant to section 8(c) of the Act.

(6) The term *adminstrative judge* means an administrative judge or an administrative law judge, attorney-advisor, or other appropriate official of the Office of Hearings and Appeals to whom the Director of the Office of Hearings and Appeals has redelegated his authority, as designee of the Secretary, for making heirship determinations as provided for in these regulations.

(7) The term *appellant* means a party aggrieved by a final order or final order upon reconsideration issued by an administrative judge who files an appeal with the Board.

[56 FR 61383, Dec. 3, 1991; 56 FR 65782, Dec. 18, 1991, as amended at 64 FR 13363, Mar. 18, 1999]

§4.351 Commencement of the determination process.

(a) Unless an heirship determination which is recognized by the Act already exists, the Project Director shall commence the determination of the heirs of those persons who died entitled to receive compensation by filing with the administrative judge all data, identifying the purpose for which they are being submitted, shown in the records relative to the family of the decedent.

(b) The data shall include but are not limited to:

EXHIBIT B

NOTICE OF AVAILABILITY

FINDING OF NO SIGNIFICANT IMPACT FOR THE PROPOSED TRUST ACQUISITION OF FIVE PARCELS KNOWN AS THE CAMP 4 PROPERTY

SANTA YNEZ BAND OF CHUMASH INDIANS

SANTA BARBARA COUNTY, CALIFORNIA

Notice is hereby given that the Bureau of Indian Affairs (BIA) has issued a Finding of No Significant Impact (FONSI), determining that the proposed trust acquisition of 5 parcels encompassing a total of approximately 1,433 acres (the site), by the United States for the Santa Ynez Band of Chumash Indians (Tribe) will not result in significant effects to the quality of the human environment. Therefore, an Environmental Impact Statement is not required. The BIA's determination is based upon the analysis in the Environmental Assessment and Final Environmental Assessment, consideration of comments received during the public review periods, and the implementation of mitigation measures. To allow for public review, no decision will be made during a period of 30-days beyond the signing of the FONSI.

The proposed Federal action is the fee-to-trust transfer of 5 parcels totaling 1,433± acres, which would result in the development of up to 143 residential units. The proposed trust parcels are located east of State Route 154 and north of Armour Ranch Road in an unincorporated area of Santa Barbara County, east of the Town of Santa Ynez, 3.95 miles east of the City of Solvang, and 22.2 miles northwest of the City of Santa Barbara, California. The project site is within the "Santa Ynez Valley Planning Area" of Santa Barbara County and occurs in Section 8, Township 6 North, Range 30 West on the "Santa Ynez," California U.S. Geological Survey (USGS) 7.5-Minute Topographic Quadrangle. The purpose of the proposed action is to provide necessary housing in close proximity to the existing Reservation for the Tribe's current members and future generations, ensuring existing and future members are afforded the ability to live under Tribal governance as a community within the Tribe's ancestral and historic land holdings. The Tribe proposes to provide housing assignments to Tribal members who do not currently have assignments on the existing Reservation. Additional supporting infrastructure is also planned including access roads, a centralized wastewater treatment plant, and on-site water supply facilities.

The FONSI is a finding on environmental effects, not a decision to proceed with an action, therefore it cannot be appealed. 25 C.F.R. Part 2.7 requires a 30-day appeal period after the decision to proceed with the action is made before the action may be implemented. Appeal information will be made publicly available when the decision to proceed is made.

Copies of the FONSI are also available for review at www.ChumashEA.com. For more information, please contact Chad Broussard, Environmental Protection Specialist, Bureau of Indian Affairs, Pacific Regional Office, 2800 Cottage Way, Sacramento, CA 95825, phone (916) 978-6165, email chad.broussard@bia.gov.

FINDING OF NO SIGNIFICANT IMPACT FOR THE PROPOSED SANTA YNEZ BAND OF CHUMASH INDIANS CAMP 4 FEE-TO-TRUST PROJECT

AGENCY: Bureau of Indian Affairs

ACTIONS: Finding of No Significant Impact

SUMMARY: The Santa Ynez Band of Chumash Indians (Tribe) submitted a request to the Bureau of Indian Affairs (BIA) to approve the trust acquisition of approximately 1,411 acres plus rights of way for tribal housing (Proposed Action). The land proposed for trust acquisition and development known locally as "Camp 4" is located within an unincorporated area of Santa Barbara County approximately 1.5 miles northwest of the Tribe's existing Reservation, east of the Town of Santa Ynez, 3.95 miles east of the City of Solvang, and 22.2 miles northwest of the City of Santa Barbara, California (project site). The project site is within the "Santa Ynez Valley Planning Area" of Santa Barbara County and occurs in Section 8, Township 6 North, Range 30 West on the "Santa Ynez," California U.S. Geological Survey (USGS) 7.5-Minute Topographic Quadrangle.

Based upon the entire administrative record including the analysis in the Final Environmental Assessment (EA) and consideration of comments received during the public review period, the BIA makes a finding of no significant impact (FONSI) for the federal action to acquire approximately 1,411 acres plus rights of way into trust and subsequent implementation of Alternative A (Five-Acre Housing Plots) or Alternative B (One-Acre Housing Plots). This finding constitutes a determination that the Proposed Action is not a federal action significantly affecting the quality of the human environment. Therefore, an Environmental Impact Statement (EIS) is not required. Comment letters received on the Final EA are provided as **Exhibit A**. Responses to each comment letter received are provided as **Exhibit B**. A Mitigation Monitoring and Enforcement Program is provided as **Exhibit C**. A letter from the U.S. Fish and Wildlife Service (USFWS) concurring that the trust acquisition is not likely to adversely affect federally-listed species under Section 7 of the Endangered Species Act is provided as **Exhibit D**. Letters from the California Office of Historic Preservation (OHP) concurring that the undertaking will not affect cultural and historic resources are provided as **Exhibit E**. Tribal Resolutions related to the Proposed Action that were passed by the Tribe since the release of the Final EA are provided as **Exhibit F**. A copy of the signed Notification of Assumption of Williamson Act Contract for the project site is included as **Exhibit G**.

BACKGROUND: The members of the modern Tribe are the direct descendants of the original Chumash peoples, whose numbers totaled 18,000-22,000 prior to the Spanish contact. Prior to the Mission Period, there were approximately 150 independent Chumash villages along

the coast of California. Subsequent to Spanish contact, the Chumash population dwindled to approximately 2,700 in 1831. The Tribe is a politically independent unit of the Chumash cultural group and is the only federally-recognized band of Chumash Indians. Historically the Chumash had an extensive territory ranging along the California Coast. The Tribe's Reservation was established in 1906 through grants to the federal government from the Catholic Church. The 100 acres of land that initially formed the Tribe's Reservation, was largely unusable creek beds and flood plains. The Tribe reorganized its government under the Indian Reorganization Act (IRA) of 1934 after having voted to accept the provisions of the IRA. Although complete reorganization efforts in California were slow to come from the federal government, the Tribe nonetheless began developing both its governmental functions and structures to assure continued survival of the Tribe and its members. The turbulent beginnings of a casino in the 1980s ultimately provided a base upon which the Tribe began to develop its governmental capabilities and entrepreneurial infrastructure. The Tribe has slowly been able to purchase additional properties making the current Reservation approximately 146 acres.

The Tribe's purpose for taking the 1,411 acres plus rights of way of land into trust is to provide housing to accommodate the Tribe's current members and anticipated growth. The project site lies within the area historically held for the Tribe by the Roman Catholic Church. This geographical area was subject of the 1897 Quiet Title Action brought by the Roman Catholic Church (Bishop of Monterey), and these lands are part of the Tribe's ancestral territory and comprise most of its historic territory. These lands were once part of the lands of Mission Santa Ines and part of the subsequent Rancho Canada de los Pinos recognized by the U.S. government as well as being near an individual land grant made to a Santa Ynez Chumash Indian by Mexican Governor Micheltorena. All these lands were considered to have been the property of the Santa Ynez Mission Indians by the Spanish and Mexican governments and the Catholic Church. After California statehood, the Catholic Church carried forward this theory of land tenure by the Santa Ynez Chumash.

The proposed trust land would enable the Tribe to provide housing for its existing tribal members and continue to provide housing for descendants as they come of age. The current Reservation lands are highly constrained due to a variety of physical, social, and economic factors. A majority of the lands held in trust for the Tribe are located in a flood plain. This land is not suitable for much, if any, development because of flooding and drainage problems. The irregular topography and flood hazards are associated with the multiple creek corridors which run throughout the Reservation, resulting in severe limitations of efficient land utilization. The current Reservation has a residential capability of approximately 26 acres or 18 percent of the Reservation and an economic development capability of approximately 16 acres or 11 percent of the Reservation. The remaining 99 acres or 71 percent of the Reservation is creek corridor and sloped areas which are difficult to impossible to develop. Therefore, the size of the usable portion of the Tribe's Reservation amounts to approximately 50 acres, much of which has already been developed.

The Tribe has a population of 136 tribal members and approximately 1,300 lineal descendants which it must provide for. Currently, approximately 17 percent of the tribal members and lineal descendants have housing on tribal lands. All current land assignments on the existing Reservation will continue to be maintained unchanged. Article VIII of the Articles of Organization of the Tribe expressly states that only the General Council composed of all adults members of the Tribe over the age of 21 can veto or cancel an existing land assignment on the Reservation. This trust land acquisition is an integral part of the Tribe's efforts to bring tribal members and lineal descendants back to the Tribe, accommodate future generations, and create a meaningful opportunity for those tribal members and lineal descendants to be a part of a tribal community revitalization effort that rebuilds tribal culture, customs, and traditions. To meet these goals, the Tribe needs additional trust land to provide housing for tribal members and lineal descendants who currently are not accommodated with tribal housing.

Based on these constraints, the Tribe is unable to provide adequate housing for its current members and will be unable to provide housing for future tribal members on the existing Reservation, risking the Tribe's ability to provide for future generations and maintain its cultural foundations within its ancestral lands.

The trust transfer of the project site would provide necessary housing within the Tribe's ancestral and historic territory for its current members and future generations. This would thereby protect the Tribe's heritage and culture by ensuring existing and future generations are afforded the ability to live under tribal governance as a community within the Tribe's ancestral and historic land holdings. Secondarily, the trust acquisition of the proposed trust land would also allow full tribal governance over its existing agricultural operations on the property; thereby allowing the Tribe to continue to maintain economic self sufficiency through diversified tribally-governed commercial enterprises. Under the Proposed Action, the tribal government would be able to exercise its sovereignty over its land holdings.

An EA for the Proposed Action (SCH #20130810610) was submitted to the State Clearinghouse and released for public and agency review for a 30-day comment period, established consistent with Section 6.2 of the Bureau of Indian Affairs National Environmental Policy Act (NEPA) Guidebook (59 IAM 3-H) (BIA NEPA Guidebook), beginning on August 20, 2013 and was noticed to end on September 19, 2013 (referred herein as the "2013 EA"). In response to requests received, the public comment period was extended to October 7, 2013, providing an extension of 19 days. During the public comment period, the federal government was partially shut down on October 1, 2013 and returned to full operation on October 16, 2013. The Council on Environmental Quality (CEQ) issued guidance regarding NEPA documents under public review during the government shutdown that recommended extending any comment period deadlines held during the government shutdown by a minimum of the period of time equal to the shutdown (16 days). The comment period was therefore extended a second time to November 18, 2013.

Overall, the 2013 EA was released for public and agency review and comment for 90 days. The BIA received a total of 1,129 comment letters; a majority of which were form letters.

As stated in Section 1.3 of the 2013 EA, one of the purposes of the Proposed Action was to fulfill the purpose of the Tribe's Consolidation and Acquisition Plan (Plan) by providing housing within the Tribal Consolidation Area (TCA) to accommodate the Tribe's current members and anticipated growth. The Tribe submitted the Plan to the BIA in March 2013, which identified a TCA encompassing approximately 11,500 acres within the Santa Ynez Valley, including the project site. The BIA approved the Plan on June 17, 2013. Several appeals were filed to the Interior Board of Indian Appeals (IBIA) requesting review of the BIA Regional Director's approval of the Plan and TCA. On October 11, 2013, the Tribe withdrew without prejudice the approved Plan and corresponding TCA via Resolution #926 Santa Ynez Band of Chumash Indians-Tribal Land Consolidation Area. The Tribe also requested that the BIA dismiss any appeals on the TCA without prejudice. In response to this request, the IBIA dismissed the appeals.

The Tribe prepared and submitted a revised trust acquisition application to the BIA excluding the withdrawn Plan and TCA from the purpose and need. A Final EA was prepared that addresses the revised trust acquisition request, responds to comments received on the 2013 EA, and was completed in accordance with the requirements set forth in the NEPA, the CEQ Guidelines for Implementing NEPA, and the BIA NEPA Guidebook. The Final EA was submitted to the State Clearinghouse (SCH# 2013081060) and released for public and agency review for a 30-day review period, established consistent with Section 6.2 of the BIA NEPA Guidebook, beginning on May 29, 2014 and was noticed to end on June 30, 2014 (Final EA). In response to requests received, the review period was extended to July 14, 2014, providing an extension of 15 days.

On March 11, 2014, the BIA initiated informal consultation with the USFWS pursuant to Section 7 of the Endangered Species Act of 1979. On June 9, 2014, the USFWS requested clarification into the mitigation measures and potential impact to special status species and noted discrepancies between the Biological Assessment sent to the USFWS for informal consultation and the 2013 EA. A response to the USFWS requests for clarification was sent with a copy of the Final EA on June 12, 2014. The USFWS responded on July 24, 2014 with additional request for clarification on the findings of the Final EA as well as recommendations for mitigation for the California red-legged frog. A technical memorandum responding to the requests for clarification as well as commitments to the suggested mitigation was sent to the USFWS on August 13, 2014. On October 8, 2014, the USFWS issued a letter of concurrence (**Exhibit D**) to the BIA supporting a finding of Not Likely to Adversely Affect for the Proposed Action.

On February 24, 2014 the BIA initiated consultation with the California Office of Historic Preservation (OHP) pursuant to Section 106 of the National Historic Preservation Act of 1966. On March 6, 2014 the BIA received concurrence from the State Historic Preservation Officer

(SHPO) that implementation of the proposed fee-to-trust transfer would result in "No Adverse Effect" to historic properties pursuant to 36 CFR Part 800.5(b) "Protection of Historic Properties"(**Exhibit E**).

To determine if the Proposed Action is a federal action significantly affecting the quality of the human environment, the BIA assessed the results of the 2013 EA and Final EA as well as the comments received during the public review period for both documents consistent with the policies and goals of NEPA and the BIA NEPA Guidebook. In addition, since the completion of the Final EA and in response to comments received on the Final EA, the Tribe passed Tribal Resolution 930B which selects the one-acre concept plans as the Preferred Project Alternative (refer to **Exhibit F**).

DESCRIPTION OF THE PROPOSED ACTION: The BIA's Proposed Action consists of the transfer of the project site into federal trust status for the benefit of the Tribe. The proposed fee-to-trust conveyance is for 5 parcels totaling approximately 1,411 acres plus rights of way. A reasonably foreseeable consequence of this action is the subsequent development of the project site for tribal housing on five or one-acre lots and associated facilities. The housing project would include up to 143 residential units, as well as supporting infrastructure including on-site wastewater treatment and reuse of recycled water and development of groundwater to meet potable water demands.

ALTERNATIVES CONSIDERED: The BIA considered three alternatives in the Final EA, as summarized below.

1) **Alternative A – Five-Acre Lots.** 1,433± acre (1,411 acres plus rights of way) trust land acquisition and assignment of 143 five-acre residential lots for tribal members. The residential lot assignments and access roadways would cover approximately 793 acres of the project site. The project site would include 206 acres of vineyards (50-acre reduction of the existing vineyard), 300 acres of open space/recreational area, 98 acres of riparian corridor and 33 acres of oak woodland conservation, and 3 acres of Special Purpose Zone-Utilities. Water, wastewater, and reclamation facilities would be constructed on-site.
2) **Alternative B – One-Acre Lots.** Identical trust land acquisition and development of 143 one-acre residential lots for tribal members. The residential lot assignments and access roadways would cover approximately 194 acres of the project site. The project site would include 869 acres of open space/recreational area, 30 acres of tribal facilities (including 12,042 square feet of tribal facilities), and the same acreages of vineyard, riparian corridor and oak woodland conservation, and utilities land uses as proposed under Alternative A. Water, wastewater, and reclamation facilities would also be constructed on-site.

3) **No Action Alternative**. Under the No Action Alternative, the 1,411 acres plus rights of way would not be placed into federal trust and would not be developed. Land use jurisdiction for the 1,411 acres plus rights of way would remain with Santa Barbara County. To maintain economic viability, the Tribe would maximize vineyard use on the project site through adding approximately 44 acres of vines on the site.

ENVIRONMENTAL IMPACTS: Potential impacts to land resources, water resources, air quality, biological resources, cultural resources, socioeconomic conditions and environmental justice, transportation and circulation, land use, public services, noise, hazardous materials, and visual resources were evaluated in the 2013 and Final EAs for Alternatives A and B, with the following conclusions:

A. Project design, implementation of Best Management Practices (BMPs), and mitigation measures would ensure impacts to **land resources** would be less than significant. Refer to Final EA Sections 2.2.10, 4.1.1, 4.2.1, and 5.1.
B. Project design, implementation of BMPs, and mitigation measures would ensure impacts to **water resources** would be less than significant. Refer to Final EA Sections 2.2.5, 2.2.6, 2.2.8, 2.2.10, 2.3, 2.3.1, 4.1.2, 4.2.2, and 5.2. Under existing conditions, approximately 256 acre-feet per year (AFY) of groundwater is utilized on the project site for irrigation of the existing 256-acre vineyard. The net water demand for potable water for Alternative A is 348 AFY, including 172 AFY for residential (and a reduction of 30 AFY of recycled water) and 206 AFY for vineyard irrigation. The net water demand for potable water for Alternative B is 256 AFY, including 84 AFY for residential/Tribal facilities (and a reduction of 34 AFY of recycled water) and 206 AFY for vineyard irrigation. Accordingly, implementation of Alternative A would result in an increase of 92 AFY over existing conditions and implementation of Alternative B would result in no net increase in water demands over existing conditions. According to local planning documents, the Uplands Basin has a surplus of several hundred AFY (estimate in the 2009 Santa Ynez Valley Community Plan to be approximately 513 AFY) of safe yield. Potable water supply demands for the residential aspects of Alternatives A and B would be met via connection to two new wells to be developed below the Baseline Fault at a distance that would prevent adverse impacts to neighboring wells, per the mitigation measure identified in Section 5.2.
C. Project design, implementation of BMPs, and mitigation measures would ensure impacts to **air quality** would be less than significant. Refer to Final EA Sections 2.2.10, 4.1.3, 4.2.3, and 5.3.
D. Project design, implementation of BMPs, and mitigation measures would ensure impacts to **biological resources** would be less than significant. Refer to Final EA Sections 2.2.10, 4.1.4, 4.2.4, and 5.4.
E. Implementation of mitigation measures would ensure impacts to **cultural resources** would be less than significant. Refer to Final EA Sections 4.1.5, 4.2.5 and 5.5.

F. Impacts to **socioeconomic conditions and environmental justice** issues would be less than significant. Refer to Final EA Sections 4.1.6 and 4.2.6.

G. Project design and implementation of the mitigation measures would ensure impacts to **transportation and circulation** would be less than significant. Refer to Final EA Sections 2.2.7, 4.1.7, 4.2.7, and 5.7.

H. Impacts to **land use resources** would be less than significant. Refer to Final EA Sections 4.1.8 and 4.2.8.

I. Project design, implementation of BMPs, and mitigation measures would ensure impacts to **public services** would be less than significant. Refer to Final EA Sections 2.2.4, 2.2.5, 2.2.6, 2.2.10, 2.3.1, 4.1.9, 4.2.9, and 5.9. In addition, since the release of the Final EA, the Tribe has passed Resolution 948 which establishes the Santa Ynez Tribal Police Department, thereby reducing the reliance on the Santa Barbara County Sheriff's Office for law enforcement on the Tribe's trust lands. In addition, the Tribe passed Resolution 949 which establishes a dedicated fund for local school districts that include the project site. The resolution establishes an annual grant set aside program for the local school districts equivalent to the 2013-2014 property taxes paid on the project site. The passing of these resolutions further reduces impacts to public services. A copy of Resolutions 948 and 949 are provided in **Exhibit F**.

J. Impacts associated with **noise** would be less than significant. Refer to Final EA Sections 4.1.10 and 4.2.10.

K. Project design and implementation of the mitigation measures would ensure that hazardous materials impacts would be less than significant. Refer to Final EA Sections 2.2.6, 2.2.10, 4.1.11, 4.2.11, and 5.11.

L. Project design and implementation of BMPs would ensure impacts to **visual resources** would be less than significant. Refer to Final EA Sections 2.2.10, 4.1.12, and 4.2.12.

M. Project design, implementation of BMPs and mitigation measures would ensure that **cumulative impacts** would be less than significant. Refer to Final EA Sections 2.2.10, 2.2.6, 2.3.6, 4.5, 5.1, 5.2, 5.3, 5.4, 5.5, 5.7, 5.9, 5.10, and 5.11.

BEST MANAGEMENT PRACTICES: Protective measures and BMPs have been incorporated in the project design of Alternatives A and B to eliminate or substantially reduce environmental impacts from the project. These measures and BMPs are listed below:

Protective Measures and BMPs for Alternatives A and B

Wastewater Treatment Plant (WWTP)

- Sodium hypochlorite, caustic soda and/or citric acid would be stored in the chemical room of the WTTP. The storage and metering facilities would be located inside a chemical spill containment area, sized to contain 150 percent of the storage volume in case of an unintentional release.
- The sodium hypochlorite would be stored in a 55-gallon drum and the citric acid would be stored as dry material and then in a 50-gallon mixing tank when needed.

- The WTTP would incorporate an active odor control system such as a packaged biofilter with an active carbon absorption unit.
- All treated effluent storage dimensions will be designed to hold 100-year rainfall event precipitation amounts, which is approximately 1.5 times greater than that estimated to be required for normal rainfall years.
- Disposal of treated wastewater to irrigation areas shall be adjusted based on weather conditions in order to prevent surface runoff.
- The Tribe would adopt standards equivalent to the landscape irrigation standards in the State Water Resources Control Board Recycled Water Policy (as referenced in Resolution No. 2009-0011).
- Potential groundwater impacts from irrigation and effluent storage will be minimized through treatment of effluent through nitrogen and salinity reduction processes.
- Operation and maintenance of the wastewater utility from house service laterals, through the wastewater and effluent system, to treatment and disposal will be by the Tribe utilizing contract services. Individual residents will have no responsibility regarding operation and maintenance of any aspect of the wastewater treatment and conveyance systems. The residents' sole responsibility would be to follow tribal guidance on what should and should not be flushed down sinks and toilets. Community education shall be promoted to reduce needless contaminants to wastewater.
- The effluent storage basins and irrigation areas would be located and designed so that they are well-drained and readily accessible.
- Implementation of the following measures would be incorporated during design and operation of the wastewater and effluent system to minimize chances of system failures:
  - Solvent welded plastic house services;
  - Above grade cleanouts;
  - Dual (redundant) discharge pumps;
  - High water alarms;
  - Maintaining records of pumping, inspections, and other maintenance activities; and
  - Flushing of solvent, paint, paper towels, diapers, feminine hygiene products, cigarette butts, pesticides, and fertilizer would be discouraged by recurring outreach notices to the residents. The frequency of the noticing would be based on the results of ongoing system inspections.

Land Resources

- All structures would meet the Tribe's building ordinance, which meets or exceeds International Building Code (IBC) requirements.
- Non-corrosive materials and/or protective coatings shall be used for buried facilities constructed in corrosive soils.

Water Resources

- Areas outside of buildings and roads would be kept as permeable surfaces to the extent practicable; either as vegetation or high infiltration cover, such as mulch, gravel, or turf

block. Pedestrian pathways would use a permeable surface where possible, such as crushed aggregate or stone with sufficient permeable joints (areas between stone or brick if used).

- Existing native vegetation would be retained where possible.
- Roof downspouts would be directed to splash blocks and not to underground storm drain systems.
- Runoff from rooftops and other impervious areas would be directed to vegetated areas to help treat and infiltrate stormwater prior to leaving the site.
- Runoff from roadways would filter though rock-lined swales and bio-swales.
- Permanent energy dissipaters would be included for drainage outlets.
- Rock rip-rap energy dissipaters would be installed at the point of release of concentrated flow.
- High water-demand plants would be minimized in landscaping plans. Native and drought-tolerant plant species (trees, shrubs, and ground cover) landscaping would be emphasized.

Air Quality

The following measures would reduce project-related greenhouse gas emissions associated with climate change:

- Buildings would be sited to take advantage of shade, prevailing winds, and sun screens to the extent feasible to reduce energy use.
- Buildings would be designed to include efficient lighting and lighting control systems.
- Energy efficient heating and cooling systems as well as appliances would be installed in residences and tribal facilities.
- Solar or other alternative power systems would be utilized where feasible.

Biological Resources

- Native trees would be preserved to the maximum extent feasible in accordance with the Tribe's *Tribal Ordinance Regarding Oak Tree Preservation for the Santa Ynez Band of Chumash Indians*.
- All identified wetland areas and California Live Oak would be avoided to the maximum extent feasible.
- Preservation of existing Resource Management Zones (RMZs) would result in maintaining other significant native vegetation as well; i.e. coastal sage scrub.

Public Services

- Structural fire protection would be provided through compliance with tribal ordinances no less stringent than applicable International Fire Code requirements. The Tribe would ensure that appropriate water supply and pressure is available for emergency fire flows.

Visual Resources

- Signage for all streets, tribal facilities, and the residential community would be subtly

incorporated into the landscape.

- Lighting would include emergency and nighttime security lighting at public facilities including parking lots, street intersections, and residential areas and would be downcast and shielded, in accordance with "dark sky" principles. Street lighting would consist of pole-mounted lights, limited to 18 feet tall, with cut-off lenses and down cast illumination to the extent feasible.

Green Building

The Tribe proposes to incorporate the "Build it Green" 2005 Green Building Guidelines for New Home Construction along with the Leadership in Energy and Environmental Design (LEED) for Homes criteria for all the residential units on the project site (U.S. Green Building Council, 2010). The above-noted BMPs and protective measures would aid the Tribe in achieving these standards. In addition, the following measures would be implemented:

- Individual homes would have limited personal planting areas with a portion of the watering needs satisfied from captured rainwater or reclaimed water.
- Indoor plumbing would use the highest efficiency fixtures and fittings available.
- All homes would be designed for efficient use of energy and natural resources and would be sized below the median standard based on the LEED for Homes rating system. Each plan would be oriented to maximize access to solar energy and natural daylight. Operable windows would be placed to provide efficient natural ventilation, taking advantage of prevailing breezes.
- All appliances and heating, ventilation, and air conditioning (HVAC) equipment would be Energy Star Certified for optimal performance.
- During construction, all waste material would be separated and sorted into individual bins for recycling.
- At least 75 percent of the residences built would be single story to minimize visual effects.
- Building envelopes would be designed to maximize performance of HVAC, lighting, and other energy systems. Equipment and appliances would meet or exceed California State, Title 24 energy requirements.
- HVAC equipment would have no chlorofluorocarbon (CFC) refrigerants.
- To the extent possible, building materials with recycled content would be specified for use during construction.
- Building and landscape elements would be designed to give preference to materials that are produced regionally or within 500 miles of the project.
- Wood materials and products used in construction would be specified to be Forest Stewardship Council (FSC) certified from suppliers who practice responsible and sustainable forest management.
- During construction, on-site absorptive materials would be protected from moisture damage.

- All paints, coatings, adhesives and sealants used on the interiors of buildings would have a low Volatile Organic Compound (VOC) limits to reduce odor and harmful indoor air contaminants.
- Carpets, cabinets, and other interior finishes would be selected, in part, on minimizing their potential to off-gas or adversely affect indoor air quality.

Additional Protective Measures and BMPs for Alternative B

Public Services

- The tribal facilities would be equipped with an early detection system that ensures an initial response to any fire alarm (automatic, local, or report). This would rely on automatic sprinkler systems in the occupied areas and smoke detection, along with automatic sprinkler systems, in the areas of the facility that are normally unoccupied, such as storerooms and mechanical areas.

Green Building

- Upon completion, the tribal facilities would have trash enclosures for separation of recyclable materials and newspapers.
- The tribal facilities would meet all Americans with Disabilities Act (ADA) accessibility requirements. Pathways would meet required slopes and roadway crossings would include textured paving and indicators for the visually impaired.

SUMMARY OF EA MITIGATION MEASURES: The mitigation measures described below are included to: 1) reduce significant impacts to a less-than-significant level, 2) further reduce already less-than-significant impacts, or 3) accomplish both. All mitigation measures necessary to reduce significant impacts to less-than-significant levels will be enforceable and binding on the Tribe because they are intrinsic to the project, required by federal law, required by agreements between the Tribe and local agencies, and/or are required by tribal resolutions. The construction contract will include applicable mitigation measures, and inspectors shall be retained during construction.

LAND RESOURCES

Implementation of the protective measures and Best Management Practices (BMPs) described above along with the mitigation measures below would minimize potential impacts related to soils. These measures are recommended for Alternatives A and B.

- The Tribe shall comply with the National Pollutant Discharge Elimination System Permit (NPDES Construction General Permit) from the United States Environmental Protection Agency (EPA) for construction site runoff during the construction phase in compliance with the Clean Water Act (CWA). A Storm Water Pollution Prevention Plan (SWPPP) shall be prepared, implemented, and maintained throughout the construction phase of the development, consistent with Construction General Permit requirements. The SWPPP shall detail the BMPs to be implemented during

construction and post-construction operation of the selected project alternative to reduce impacts related to soil erosion and water quality. The BMPs shall include, but are not limited to, the following:

- Existing vegetation shall be retained where possible. To the extent feasible, grading activities shall be limited to the immediate area required for construction and remediation.
- Temporary erosion control measures (such as silt fences, fiber rolls, vegetated swales, a velocity dissipation structure, staked straw bales, temporary re-vegetation, rock bag dams, erosion control blankets, and sediment traps) shall be employed for disturbed areas during the wet season.
- No disturbed surfaces shall be left without erosion control measures in place during the winter and spring months.
- Construction activities shall be scheduled to minimize land disturbance during peak runoff periods. Soil conservation practices shall be completed during the fall or late winter to reduce erosion during spring runoff.
- Creating construction zones and grading only one area or part of a construction zone at a time shall minimize exposed areas. If possible during the wet season, grading on a particular zone shall be delayed until protective cover is restored on the previously graded zone.
- Disturbed areas shall be re-vegetated following construction activities.
- Construction area entrances and exits shall be stabilized with crushed aggregate.
- Sediment shall be retained on-site by a system of sediment basins, traps, or other appropriate measures.
- A spill prevention and countermeasure plan shall be developed which identifies proper storage, collection, and disposal measures for potential pollutants (such as fuel, fertilizers, pesticides, etc.) used on-site.
- Petroleum products shall be stored, handled, used, and disposed of properly in accordance with provisions of the Clean Water Act [33 United States Code (U.S.C.) 1251 to 1387].
- During the wet season, construction materials, including topsoil and chemicals, shall be stored, covered, and isolated to prevent runoff losses and contamination of surface and groundwater.
- Fuel and vehicle maintenance areas shall be established away from all drainage courses and designed to control runoff.
- Sanitary facilities shall be provided for construction workers.
- Disposal facilities shall be provided for soil wastes, including excess asphalt during construction and demolition.

- All workers shall be trained in the proper handling, use, cleanup, and disposal of all chemical materials used during construction activities and shall provide appropriate facilities to store and isolate contaminants.

- All contractors involved in the project shall be trained on the potential environmental damages resulting from soil erosion prior to development by conducting a pre-construction conference. Copies of the project's erosion control plan shall be distributed at that time. All construction bid packages, contracts, plans, and specifications shall contain language that requires adherence to the plan.

WATER RESOURCES

Implementation of the protective measures and BMPs described above along with the recommended mitigation measures below would minimize potential impacts related to water resources. These measures are recommended for Alternatives A and B.

- Development and implementation of a SWPPP under **Land Resources** will reduce impacts to stormwater quality.
- Through contractual obligations, the Tribe shall ensure that construction of the wastewater treatment plant and roadways located adjacent to flood areas occur in the dry season.
- Recycled water application areas shall be monitored to ensure off-site runoff does not occur. Provisions included within monitoring requirements to reduce the potential for off-site flow shall include:
    - Recycled water shall be applied to confined areas (such as landscaped areas) only during periods of dry weather. In accordance with the water balance and seasonal storage requirements presented in the Water and Wastewater Feasibility Analysis (Appendix C of the Final EA), a minimum of five acre-feet of storage shall be provided to account for storage during wet weather and winter months when irrigation rates are lowest. The Tribe shall not apply recycled water 24 hours prior to a forecasted rain event and shall wait 24 hours after the rain event to apply recycled water.
    - Recycled water shall not be applied during periods of winds exceeding 30 miles per hour (mph).
    - Recycled water shall not be applied within 100 feet of a water of the U.S.
- New groundwater wells shall be located within the central portion of the project site, south of the Baseline fault within the permeable sands of the water-bearing Careaga Formation.
- During years when the County of Santa Barbara declares local drought conditions, there will be no turf grass irrigation allowed, thereby reducing residential lawn water demand to zero.

AIR QUALITY

Implementation of the protective measures and BMPs described above would reduce potential adverse impacts to air quality. Implementation of the mitigation measures below would minimize

potential air quality impacts related to hazardous air pollutant emissions during the construction of Alternative A or B.

- Through contractual obligations, the Tribe shall ensure construction vehicles, delivery, and commercial vehicles do not idle for more than five minutes.
- Through contractual obligations, the Tribe shall ensure heavy duty construction equipment is equipped with diesel particulate matter filters, which would reduce particulate matter from exhaust by 50 percent.
- Through contractual obligations, the Tribe shall ensure that exposed surfaces and unpaved roads are water twice a day, which would reduce fugitive dust emissions by 55 percent.
- Through contractual obligations, the Tribe shall ensure that construction equipment on unpaved roads would not exceed 15 miles per hour, which would reduce fugitive dust emissions by 44 percent.
- Residential architectural coating will be low ROG coatings, which would reduce ROG emissions by 10 percent.
- Through contractual obligations, the Tribe shall, to the extent possible and feasible, require the use of heavy duty construction equipment that meets CARB's most recent certification standards.

CLIMATE CHANGE

Implementation of the protective measures and BMPs described above along with the mitigation measures described below would minimize potential impacts related to climate change. These measures are recommended for Alternatives A and B.

- The Tribe shall adopt and comply with the California Green Building Code and exceed Title 24 standards by 25 percent.
- The Tribe shall ensure 75 percent of the solid waste generated on-site is recycled.
- The Tribe shall work with the Santa Ynez Valley Transit to extend public transportation to the project site and construct public transportation stops on Baseline Road east of SR-154.

BIOLOGICAL RESOURCES

Implementation of the protective measures and BMPs described above along with the mitigation measures below would minimize potential impacts to biological resources. These measures are recommended for Alternatives A and B.

Oak Trees

The following mitigation measures are required for Alternatives A and B to identify and avoid and/or reduce impacts to oak trees, including oak trees protected under the Tribal Ordinance Regarding Oak Tree Preservation for the Santa Ynez Band of Chumash Indians (Tribal Oak Tree Ordinance) (Santa Ynez Band of Chumash Indians, 2000) and blue oak trees within the project site:

- Once the construction footprint is finalized, the contractor shall flag any oak trees slated for removal prior to groundbreaking. An arborist accredited by the International Society of Arboriculture shall survey trees anticipated for removal, identify any oak trees within the selected footprint, and prepare an Arborist Report. The Arborist Report shall identify all oak trees anticipated for removal and require a no net loss of oak trees. The Arborist Report shall provide a revegetation plan that includes proposed planting locations within the project site with a minimum spacing of 20 feet, protection within the dripline of newly planted trees, and a five-year monitoring plan to ensure that the revegetation effort is successful.

Waters of the U.S.

The following mitigation measures are required for Alternatives A and B to identify and avoid and/or reduce impacts to waters of the U.S. (including wetlands) within the project site:

- Any proposed construction activities that would occur within the vicinity of potentially jurisdictional waters of the U.S. shall be conducted during the dry season (i.e., April 15 through October 15) to further reduce the quantity of potential sedimentation within the watershed.
- A Section 404 Clean Water Act permit shall be obtained from the U.S. Army Corps of Engineers (USACE) prior to any discharge of dredged or fill material into waters of the U.S. An Individual Permit may be required if the development of the selected alternative exceeds 0.5 acres of impacts to waters of the U.S. The Tribe shall comply with all the terms and conditions of the permit and compensatory mitigation shall be in place prior to any direct effects to waters of the U.S. At minimum, mitigation measures require the creation of waters of the U.S. at a 1:1 ratio for any affected waters of the U.S. The U.S. Environmental Protection Agency (USEPA) shall require a 401 Water Quality Certification permit prior to the USACE issuance of a 404 permit. Mitigation shall be implemented in compliance with any permits.

Federally Listed Wildlife

The following mitigation measures are required for Alternatives A and B to compensate for adverse affects to vernal pool fairy shrimp (*Branchinecta lynchi*; VPFS). Refer to **Exhibit D** for concurrence from USFWS that the following mitigation measures would reduce impacts to VPFS to a less-than-significant level:

- Prior to the final site determination of the residential units, utility corridors, roadways, and any other project component that would result in ground disturbance, a 250 foot wetland habitat buffer zone will be established around seasonal wetland habitat within the project site to assure avoidance of direct or indirect impacts to VPFS.
- Prior to construction within 500 feet of a wetland habitat buffer zone, a qualified biologist shall demarcate each buffer zone using appropriate materials such as high visibility construction fencing, which will not be removed until the completion of construction activities within 500 feet of the wetland habitat buffer zone.
- Staging areas shall be located away from the wetland habitat buffer zones. Temporary stockpiling of excavated or imported material shall occur only in approved construction staging areas.
- Prior to construction within 500 feet of a wetland buffer zone, a USFWS-approved biologist shall conduct a habitat sensitivity training related to VPFS for project contractors and personnel. Supporting materials containing training information shall be prepared and distributed. Upon completion of training, all construction personnel shall sign a form stating that they have attended the training and understand all the conservation measures. Training shall be conducted in languages other than English, as appropriate. Proof of this instruction will be kept on file with the Tribe. The Tribe will provide the USFWS with a copy of the training materials and copies of the signed forms by project staff indicating that training has been completed within 30 days of the completion of the first training session. Copies of signed forms will be submitted monthly as additional training occurs for new employees. The crew foreman will be responsible for ensuring that construction personnel adhere to the guidelines and restrictions. If new construction personnel are hired following the habitat sensitivity training, the crew foreman will ensure that the personnel receive the mandatory training before starting work.
- With concurrence from USFWS that the mitigation strategy above would affect but not adversely affect CRLF and VPFS and designated habitat (**Attachment D**), the following mitigation measure from the Final EA would not be implemented:
    - 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.

The following mitigation measures are required for Alternatives A and B to compensate for adverse affects to California red-legged frog (*Rana aurora draytonii*; CRLF). Refer to **Exhibit D** for concurrence from USFWS that of the following mitigation measures would reduce impacts to CRLF to a less-than-significant level:

- A qualified biologist shall conduct a habitat sensitivity training related to CRLF for project contractors and personnel, as identified under the mitigation measures for VPFS.

- A qualified biologist shall conduct a preconstruction survey within 14 days prior to the onset of construction activities occurring within 1.6 kilometers of potential breeding habitat.
- A qualified biologist shall monitor construction activities during initial grading activities within the project site. Should a CRLF be detected within the construction footprint, grading activities shall halt and the USFWS shall be consulted. No grading activities shall commence until the biologist determines that the CRLF has vacated the construction footprint on its own accord and the USFWS authorizes the re-initiation of grading activities.
- If the National Weather Service forecast predicts a rain event of ½ inch or more over a 48-hour period for the worksite area, construction activities will be halted 24 hours before the rain event is anticipated to begin. Construction activities, for the purposes of this protective measure, consist of all activities which pose a risk of crushing dispersing amphibians including driving construction vehicles and equipment, and activities that alter the natural contours of the existing property including digging trenches, modifying drainages, vegetation clearing and grubbing, land grading, and pouring of building pads for new structures. After a rain event, a qualified biologist will conduct a pre-construction survey for amphibians dispersing through the project site. Construction will resume only after the site has sufficiently dried and the qualified biologist determines that amphibians are unlikely to be dispersing through the project site.

Nesting Migratory Birds and Other Birds of Prey

The following mitigation measures are required for Alternatives A and B to avoid and/or reduce impacts to migratory birds and other birds of prey nesting within the project site:

- If any construction activities (e.g., building, grading, ground disturbance, removal of vegetation) are scheduled to occur during the nesting season, pre-construction bird surveys shall be conducted. The nesting season generally extends from February 1 to September 15. Preconstruction surveys for any nesting bird species shall be conducted by a qualified wildlife biologist throughout all areas of suitable habitat that are within 500 feet of any proposed construction activity. The surveys shall occur no more than 14 days prior to the scheduled onset of construction activities. If construction is delayed or halted for more than 14 days, another preconstruction survey for nesting bird species shall be conducted. If no nesting birds are detected during the preconstruction surveys, no additional surveys or mitigation measures are required.
- Any trees proposed for removal shall be removed outside of the nesting season. The nesting season generally extends from February 1 to September 15.
- If nesting bird species are observed within 500 feet of construction areas during the surveys, appropriate avoidance setbacks shall be established. The size and scale of nesting bird avoidance setbacks shall be determined by a qualified wildlife biologist and shall be dependent upon the species observed and the location of the nest.

Avoidance setbacks shall be established around all active nest locations via stakes and high visibility fencing. The nesting bird setbacks shall be completely avoided during construction activities and the fencing must remain intact. The qualified wildlife biologist shall also determine an appropriate monitoring plan and decide if construction monitoring is necessary during construction activities. The setback fencing may be removed when the qualified wildlife biologist confirms that the nest is no longer occupied and all birds have fledged.

- If impacts (i.e., take) to migratory nesting bird species are unavoidable, consultation with the USFWS shall be initiated. Through consultation, an appropriate and acceptable course of action shall be established.

CULTURAL RESOURCES

The following mitigation measure is required for Alternatives A and B to avoid adverse effects to cultural resources and/or historical properties:

- Prior to the final siting of the residential units, utility corridors, roadways, and any other project component that would result in ground disturbance, a qualified archaeologist shall identify appropriate buffer zones around each cultural resource to assure avoidance during construction.
- Prior to construction within 500 feet of a cultural resource buffer zone, a qualified Tribal Cultural Resource Monitor shall demarcate each buffer zone using appropriate materials such as high visibility construction fencing, which will not be removed until the completion of construction activities within 500 feet of the cultural resource buffer zone.
- A qualified Tribal Cultural Resource Monitor shall monitor construction activities occurring within 500 feet of the buffer zone.

The following mitigation measures are recommended for Alternatives A and B to reduce the potential for significant construction-related impacts to cultural resources, including archaeological sites, human remains, and/or paleontological resources:

- In the event that any prehistoric or historic cultural resources, or paleontological resources, are discovered during ground-disturbing activities, all work within 50 feet of the resources shall be halted and the Tribe and the Bureau of Indian Affairs (BIA) archaeologist shall be consulted to assess the significance of the find. If any find is determined to be significant by the qualified professionals, then appropriate agency and tribal representatives shall meet to determine the appropriate course of action.
- If human remains are encountered, work shall halt in the vicinity of the find and the Santa Barbara County Coroner shall be notified immediately. Pursuant to 36 Code of Federal Regulations (C.F.R.) Part 800.13 of the National Historic Preservation Act (NHPA): *Post-Review Discoveries*, and 43 C.F.R. § 10.4 (2006) of the Native American Graves Protection and Repatriation Act (NAGPRA): *Inadvertent*

Discoveries, the State Historic Preservation Office (SHPO) and the BIA archaeologist will also be contacted immediately. No further ground disturbance shall occur in the vicinity of the find until the County Coroner, SHPO, and BIA archaeologist have examined the find and agreed on an appropriate course of action. If the remains are determined to be of Native American origin, the BIA representative shall notify a Most Likely Descendant (MLD). The MLD is responsible for recommending the appropriate disposition of the remains and any grave goods.

- Should paleontological resources be unearthed, a paleontological resource impact mitigation plan (PRIMP) shall be prepared prior to further earthmoving in the vicinity of the find. The PRIMP shall detail the procedures for collecting and preserving the discovered fossils. Any fossils discovered during construction shall be accessioned in an accredited scientific institution for future study.

SOCIOECONOMIC CONDITIONS/ENVIRONMENTAL JUSTICE

No mitigation is necessary for Alternative A or B.

TRANSPORTATION AND CIRCULATION

The Tribe shall contribute its fair share of the funding for the traffic improvements recommended below proportionate to the level of impact associated with the trips added by Alternatives A or B. Mitigation measures for Alternatives A and B are summarized below.

Alternatives A and B – Near-term

- **SR-246 at SR-154** – The Tribe shall pay a fair share contribution of 22.5 percent for Alternative A or 23.2 percent for Alternative B for the development of a roundabout being installed by the California Department of Transportation (Caltrans) at SR-246 at AR-154.

Alternatives A and B – Cumulative

- **SR-154 Corridor** – The Tribe shall pay a fair share contribution, as indicated below, for the development of either roundabouts or signalization of the following intersections as determined by Caltrans:

SR-154 CORRIDOR FAIR SHARE CONTRIBUTIONS

Intersection	Fair Share Contribution (%)	
	Alt A	Alt B
SR-154 at Grand Avenue	2.9	3.2
SR-154 at Roblar Avenue	2.4	2.6
SR-154 at Edison Street	3.0	3.2
SR-154 at SR-246 and Armour Ranch Road	22.5	23.2
Source: Appendix I of the Final EA.		

Completion of roundabouts at these intersections would result in a LOS A. Signalization of these intersections would result in a LOS B. Completion of roundabouts or

signalization of the above intersections would result in an acceptable level of service on the highway segments SR-154 North of Edison Street and SR-154 South of SR-246-Armour Ranch Road.

- **SR-246 Corridor** – The Tribe shall pay a fair share contribution, as indicated below, for the development of either roundabouts or signalization of the following intersections as determined by Caltrans:

SR-246 CORRIDOR FAIR SHARE CONTRIBUTION

Intersection	Fair Share Contribution (%)	
	Alt A	Alt B
SR-246 at Alamo Pintado Road	5.3	5.9
SR-246 at Edison Street	29.4	31.5
SR-246 at Refugio Road	6.6	7.2
SR-246 at Armour Ranch Road and SR-154	22.5	23.2
Source: Appendix I of the Final EA.		

- Completion of roundabouts at these intersections would result in a LOS A. Signalization of these intersections would result in a LOS B. Completion of roundabouts or signalization of the above intersections would result in an acceptable level of service on the highway segment SR-246 from SR-154 to Solvang.

LAND USE

No mitigation is necessary for Alternative A or B.

PUBLIC SERVICES

Implementation of the protective measures and BMPs described above along with the mitigation measures below would ensure that the construction and operation of Alternatives A or B would not have significant adverse impacts on fire and emergency services.

- To minimize the risk of fire and the need for fire protection services during construction, any construction equipment that normally includes a spark arrester shall be equipped with a spark arrester in good working order. This includes, but is not limited to, vehicles, heavy equipment, and chainsaws.
- During construction, staging areas, welding areas, and areas slated for development using spark-producing equipment shall be cleared of dried vegetation or other materials that could serve as fire fuel. To the extent feasible, the contractor shall keep these areas clear of combustible materials in order to maintain a firebreak.
- Fire extinguishers shall be maintained onsite and inspected on a regular basis.
- An evacuation plan shall be developed for the project alternatives in the event of a fire emergency.
- Prior to development of the project site, the Tribe will either:
    - Grant permission to the Santa Barbara County Fire Protection Department

(SBCFD) to enter the project site after it has been taken into trust while maintaining the Tribe's existing funding of the SBCFD via the Special Distribution Funding and/or other grant programs; or

- Enter into a new agreement with the SBCFD to provide fire protection and emergency response services on the project site after it has been taken into trust. As part of this agreement, the SBCFD will ensure it has either revised its existing or entered into a new Cooperative Wildland Fire Management and Stafford Act Response Agreement (Cooperative Agreement), as necessary, with the California Department of Forestry and Fire Protection (CAL FIRE) such that the SBCFD is authorized to provide fire protection and emergency response services on the project site after it has been taken into trust.

NOISE

Impacts relating to noise generation during construction and operation would be less-than-significant for Alternative A or B, and no mitigation is necessary.

HAZARDOUS MATERIALS

Implementation of the protective measures and BMPs described above along with the mitigation measures listed below would reduce potential impacts associated with construction and operation of Alternatives A and B.

- Potentially hazardous materials, including fuels, shall be stored away from drainages and secondary containment shall be provided for all hazardous materials during construction.
- A spill prevention and countermeasure plan shall be developed which identifies proper storage, collection, and disposal measures for potential pollutants (such as fuel storage tanks) used onsite, as well as the proper procedures for cleaning up and reporting spills.
- Vehicles and equipment used during construction shall be provided proper and timely maintenance to reduce the potential for mechanical breakdowns leading to a spill. Maintenance and fueling shall be conducted in an area that meets the criteria set forth in the spill prevention plan.
- A hazardous materials storage and disposal plan shall be prepared. The plan shall provide a detailed inventory of hazardous materials to be stored and used onsite, provide appropriate procedures for disposal of unused hazardous materials, and detail training requirements for employees that handle hazardous materials as a normal part of their employment. The plan shall also include emergency response procedures in the event of an accidental release of hazardous materials.

VISUAL RESOURCES

No mitigation is necessary for Alternatives A and B.

RESPONSE TO FINAL EA COMMENTS: A total of 186 comment letters were received regarding the Final EA. These comment letters are provided as **Exhibit A**. Responses to each comment letter are provided as **Exhibit B**. A Mitigation Monitoring and Enforcement Program is provided as **Exhibit C**.

PUBLIC AVAILABILITY: A Notice of FONSI detailing the availability of the FONSI will be published in local newspapers and distributed to all persons and agencies known to be interested in the Proposed Action. The FONSI will be made available via the internet at www.chumashEA.com and as a hard copy at the Santa Ynez Band of Chumash Indians Tribal Office, 100 Via Juana Lane, Santa Ynez, CA 93460; the Solvang Public Library, 1745 Mission Drive, Solvang, CA 93463; and the Santa Ynez Branch of the Santa Barbara Public Library, 3598 Sagunto, Santa Ynez, CA 93460

DETERMINATION: While the Proposed Action assessed under the Final EA is the trust acquisition of the 1,411 acres plus rights of way, the BIA also must consider the reasonable foreseeable consequences of such action. For the Proposed Action, the foreseeable consequences assessed in the Final EA were based on the nine concept plans being considered by the Tribe (refer to Appendix N of the 2013 EA). It has been determined that the proposed federal action to approve the Tribe's request to acquire the proposed 1,411 acres plus rights of way into trust for the purpose of developing up to 143 units of tribal housing and associated facilities, with water and wastewater service provided by on-site systems, does not constitute a major federal action that would significantly affect the quality of the human environment. Therefore an Environmental Impact Statement is not required. This determination is supported by the aforementioned findings described in this FONSI, the analysis contained in the entire administrative record, including the Final EA, public comments made on the 2013 EA and the Final EA, the responses to those comments, and the mitigation imposed.

Issued in Sacramento, California this 17 day of October, 2014.

Amy L. Dutschke

Regional Director
Bureau of Indian Affairs
U.S. Department of the Interior

EXHIBIT C

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December 31, 2014 , 12:48 pm	Available for Pickup	SANTA YNEZ, CA 93460
December 31, 2014 , 12:47 pm	Arrived at Unit	SANTA YNEZ, CA 93460
December 30, 2014 , 9:21 pm	Departed USPS Facility	GOLETA, CA 93199
December 30, 2014 , 5:08 pm	Arrived at USPS Facility	GOLETA, CA 93199
December 29, 2014 , 11:10 pm	Departed USPS Facility	WEST SACRAMENTO, CA 95799
December 29, 2014 , 9:42 pm	Arrived at USPS Facility	WEST SACRAMENTO, CA 95799

Available Actions

Text Updates

Email Updates

Return Receipt After Mailing

Track Another Package

Tracking (or receipt) number

Track It

Search or Enter a Tracking Number

EXHIBIT D

July 10, 2014

Amy Dutschke, Regional Director
Bureau of Indian Affairs
Pacific Regional Office
2800 Cottage Way
Sacramento, CA 95825
amy.dutschke@bia.gov

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.

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[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 calcadenia, 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.

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[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.

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[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), t*he 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).

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[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-3.1[17]), 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,

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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 acres[3] 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.

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[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 CNDDB; 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 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 trees[10] 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.