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9

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

16 Appellants

17 v.

18 PACIFIC REGIONAL DIRECTOR,
19 BUREAU OF INDIAN AFFAIRS,

20 Appellee.
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**APPELLANT COUNTY OF SANTA
BARBARA’S SUPPLEMENTAL
REPLY BRIEF IN SUPPORT OF
APPEAL OF DECEMBER 24, 2014
NOTICE OF DECISION ON THE
SANTA YNEZ BAND OF
CHUMASH INDIANS CAMP 4 FEE-
TO-TRUST APPLICATION AND
OCTOBER 17, 2014 FINDING OF
NO SIGNIFICANT IMPACT BY
PACIFIC REGIONAL DIRECTOR**

1 **I. INTRODUCTION.**

2 Since the filing of the County of Santa Barbara’s (the “County”) reply brief in support of
3 this appeal, the Santa Ynez Band of Chumash Indians (the “Tribe”) has provided additional
4 information relevant to the Camp 4 trust acquisition that triggers the need for additional analysis
5 and environmental review under the National Environmental Policy Act (“NEPA”) and fee-to-
6 trust regulations. On March 1, 2016, the Tribe provided the County with a map entitled
7 “Proposed Tribal Land Use,” dated February 24, 2016, which detailed its plan for land uses on
8 the Camp 4 property, as well as adjoining properties owned by the Tribe. (Ex. A to
9 Supplemental Reply Brief of Appellants, Brian Kramer and Suzanne Kramer, to Responses of
10 Pacific Regional Director and Santa Ynez Band of Chumash Indians filed on March 7, 2016, also
11 attached hereto as Ex. I.¹) This land use map included commercial uses on Camp 4 not
12 previously disclosed and a much greater area of tribal facility and residential development. In
13 addition, the map showed the Tribe’s plans for increased commercial development on
14 neighboring properties and its intent to request that those lands be taken into trust. (*Id.* (showing
15 tribal property boundary to include all parcels and detailing land uses on parcels).)

16 Subsequent to the release of the February 24, 2016 land use map, the Tribe provided a
17 revised “Proposed Tribal Land Use” map to the County, which the Tribe represents is the correct
18 land use map for the parcels that it owns in the Camp 4 area.² (Santa Ynez Band of Chumash
19 Mission Indians’ Response to Motion of Appellants Brian and Suzanne Kramer to File
20 Supplemental Reply filed on March 10, 2016 (“Tribe’s Response to Kramer Supp. Reply”).)
21 Although the revised map omits the commercial development on Camp 4, it still includes
22 increased tribal facility and residential development on Camp 4 and significant commercial
23 development on neighboring properties. (*Compare* Ex. 1 to Tribe’s Response to Kramer Supp.
24 ////

25 _____
26 ¹ The County labels exhibits in this brief starting with the next letter following its prior exhibits.

27 ² The County initially was concerned about the addition of commercial development on Camp 4
28 as depicted on the February 24, 2016 map. The Tribe, however, has represented that the addition
of commercial space on Camp 4 was a drafting error. The County thus focuses on the revised
land use map provided by the Tribe as Exhibit 1 to its response brief in this supplemental reply.

1 Reply with AR0194.00030, both also attached hereto as Exs. J and K.) The revised land use map
2 also confirms the Tribe’s intent to have other properties near Camp 4 taken into trust.

3 Even without the addition of commercial development on Camp 4, the new and
4 intensified uses identified on the revised land use map for Camp 4 and surrounding properties
5 prompt the need for additional analysis of the trust acquisition under NEPA and the fee-to-trust
6 regulations. First, the revised land use map constitutes “significant new circumstances or
7 information relevant to environmental concerns and bearing on the [Camp 4 trust acquisition] or
8 its impacts.” 40 C.F.R. § 1502.9(c)(1)(ii). Specifically, the additional information provided on
9 the revised land use map is relevant to: (1) the environmental impacts of the increased intensity
10 of development on Camp 4; (2) the cumulative impacts of the acquisition and the proposed,
11 additional development in the area; and (3) the viable alternatives to taking Camp 4 into trust,
12 such as the 350 acre property for which the Tribe intends to seek trust status. Thus, the Bureau
13 of Indian Affairs (“BIA”) is required to prepare a supplemental environmental review for Camp 4
14 under NEPA.

15 Second, the revised land use map further supports certain objections the County and other
16 appellants have raised throughout the public comment and appeal process regarding the adequacy
17 of the analysis supporting the Camp 4 decision. The revised land use map confirms that the Final
18 EA failed to provide the most basic and fundamental information about the proposed acquisition
19 and development, namely, its scope. Likewise, the revised land use map confirms that the
20 Regional Director failed to adequately analyze the purposes to which the Tribe would put the
21 land, the jurisdictional and land use conflicts associated with those uses, and the economic
22 benefits of any proposed business uses under 25 C.F.R. §§ 151.10(c), (f) and 151.11(c), as she
23 did not have all of the information necessary to do so. Accordingly, the County again
24 respectfully requests that the Assistant Secretary – Indian Affairs (“Assistant Secretary”) vacate
25 the unlawful Notice of Decision (“NOD”) and Finding of No Significant Impact (“FONSI”) for
26 Camp 4 and remand the matter for adequate consideration of the fee-to-trust criteria and a proper
27 and complete environmental review, based on all of the known information.

28 //

1 **II. ARGUMENT.**

2 **A. THE REVISED LAND USE MAP CONSTITUTES SIGNIFICANT NEW**
3 **CIRCUMSTANCES OR INFORMATION REQUIRING THE BIA TO**
4 **SUPPLEMENT ITS ENVIRONMENTAL REVIEW UNDER NEPA.**

5 As stated in the County’s opening and reply briefs and acknowledged by the Tribe and
6 Regional Director, NEPA imposes a continuing duty on federal agencies to supplement EAs and
7 Environmental Impact Statements (“EIS”) in response to “significant new circumstances or
8 information relevant to environmental concerns and bearing on the proposed action or its
9 impacts.” 40 C.F.R. § 1502.9(c)(1)(ii). NEPA requires federal agencies to “apply a ‘rule of
10 reason’ as to whether a supplemental EA is required.” *Greater Gila Biodiversity Project v.*
11 *United States Forest Service*, 926 F.Supp. 914, 916–17 (D. Ariz. 1994) (citation omitted). The
12 “rule of reason turns on the value of the new information to the still pending decision making
13 process.” *Id.* (internal quotations omitted.) As discussed fully below, the revised land use map is
14 directly relevant to the environmental impacts, cumulative impacts, and alternatives analysis for
15 Camp 4. Thus, it is significant new information requiring the BIA to supplement the
16 environmental review for Camp 4 while the decision-making process is still pending. 25 C.F.R.
17 § 2.6.

18 First, the revised land use map shows an increased tribal facility build-out, increased
19 agricultural/residential development, and decreased open space from what was studied in the
20 Final EA. (*Compare* Ex. J hereto to AR0194.00030 (Ex. K hereto).) Thus, the current
21 development proposal was not studied. Increased development and decreased open space on
22 Camp 4 would impact numerous environmental concerns, including land resources, water
23 resources, air quality, biological resources, transportation and circulation, land use, public
24 services, noise, and visual resources. It would bring additional people to the area, while
25 decreasing open space. Thus, it is significant new information that is “relevant to environmental
26 concerns and bearing on the proposed action or its impacts.” 40 C.F.R. § 1502.9(c)(1)(ii).

27 Second, the revised land use map shows increased commercial development in the
28 surrounding area that was not studied in the Final EA’s cumulative impacts analysis. In
determining the significance of the Camp 4 project, the BIA must consider: “[w]hether the

1 action is related to other actions with individually insignificant but cumulatively significant
2 impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on
3 the environment. Significance cannot be avoided by terming an action temporary or by breaking
4 it down into small component parts.” 40 C.F.R. § 1508.27(b)(7). A cumulative impact is “the
5 impact on the environment which results from the incremental impact of the action when added
6 to other past, present, and reasonably foreseeable future actions regardless of what agency
7 (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result
8 from individually minor but collectively significant actions taking place over a period of time.”
9 *Kern v. U.S. Bureau of Land Mgmt.*, 284 F.3d 1062, 1075 (9th Cir. 2002).

10 Here, the revised land use map shows reasonably foreseeable future actions in the Camp 4
11 area that could be collectively significant over time, even if not deemed individually significant
12 (although they are). For example, the revised land use map shows commercial development on
13 parcels adjoining Camp 4 that was not studied or mentioned in the Final EA. (Ex. J hereto at the
14 portions shaded red; AR0194.00176-193 (Ex. K hereto).) Further, it shows that the Tribe plans
15 to request that the additional parcels be taken into trust, the impacts of which also were not
16 studied or mentioned in the Final EA. (Ex. J hereto; AR0194.) Under NEPA, the BIA must
17 study the reasonably foreseeable future commercial development and trust acquisition in the area.
18 Moreover, failing to study the Tribe’s plans for the other parcels would violate NEPA as the BIA
19 would be breaking down its proposed action into smaller components to avoid full environmental
20 analysis of the larger development plans. Therefore, the revised land use map clearly is
21 significant new information that affects the cumulative impacts analysis.

22 Third, the revised land use map shows the Tribe intends to request that the 350 acre
23 property be taken into trust. (Ex. J hereto (showing tribal property boundary to include 350
24 acres); Ex. F to County’s Opening Brief (showing 350 acre property).) This new information
25 further supports the County’s argument that the Tribe’s acquisition of the 350 acre property is a
26 new circumstance that affects the alternatives analysis for Camp 4. As the County stated in its
27 opening brief, the Tribe purchased 350 acres of land located approximately .6 miles from the
28 Tribe’s Reservation in June 2015. (Opening Brief at 23.) The parcels are not under a

1 Williamson Act Contract and are zoned AG-II-40, which applies to areas suitable for agricultural
2 land uses within a rural zone, minimum parcel size of 40 acres. (*Id.* at 24.) Areas surrounding
3 the 350 acre property to the West are zoned for residential and commercial uses and areas to the
4 South and North are inner rural areas. (*Id.*) Per the Tribe’s selected alternative of one-acre
5 parcels, 350 acres would provide sufficient land to build 143 homes as proposed in Alternative B
6 and a 30 acre tribal facility, with land remaining for other pursuits. (AR0237.00005.) The
7 alternative of the 350 acre property could have less impact to, for example, agricultural uses,
8 traffic, visual aesthetics, public services, protected habitat and species, and the County’s tax base.
9 (Opening Brief at 24.)

10 Thus, the excuse for not studying alternative sites in the Final EA – that the Tribe did not
11 own another sufficient land base near the Reservation – is moot. (AR0194.00017.) Likewise,
12 the Tribe’s argument that the property is not in trust but would need to be taken into trust is moot
13 as the Tribe intends to request that the BIA do so. Furthermore, as the County stated in its reply
14 brief, the BIA studies off-site alternatives to proposed trust acquisitions even when those
15 alternative sites may be required to be taken into trust. *Citizens for a Better Way v. U.S. Dep’t*
16 *of Interior*, No. 2:12-CV-3021-TLN-AC, 2015 WL 5648925 at *6 (E.D. Cal. Sept. 24, 2015).
17 The non-trust status of a property thus does not make it an unviable alternative. *Id.* Therefore,
18 the circumstance that the Tribe now owns a 350 acre property near its Reservation and the
19 additional information that the Tribe intends to seek trust status for that property are significant
20 new circumstances or information relevant to the alternatives analysis for Camp 4.

21 In summary, significant new circumstances and information have come to light during the
22 pendency of the Department of Interior’s final decision on the Camp 4 fee-to-trust acquisition
23 that necessitates supplemental environmental review. Namely, the Tribe purchased a large parcel
24 of land near its Reservation and has provided information regarding its plans for increased
25 development on Camp 4 and properties near Camp 4. Such new information and circumstances
26 are directly relevant to the environmental concerns related to Camp 4 and certainly bear upon
27 Camp 4’s impacts, both individually and cumulatively. Therefore, the NOD and FONSI should
28 be vacated and remanded for a supplemental and adequate environmental review.

1 **B. THE REVISED LAND USE MAP HIGHLIGHTS THE INADEQUACIES OF THE**
2 **FINAL EA FOR CAMP 4.**

3 In addition to the above issues requiring a supplemental environmental review, the
4 revised land use map supports objections made by the County and other appellants. For example,
5 it confirms that the Final EA did not adequately discuss the basic components of the project. The
6 tribal facility and residential development in the revised land use map are not the same as that
7 contained in the Final EA for the chosen Alternative B. (*Compare* AR0194.00030 (Ex. K hereto)
8 and Ex. J hereto.) Without such basic information regarding exactly what development is
9 proposed, the County could not know the central underpinnings of the environmental analysis,
10 which are: (a) the number of new people that would be accessing the property for events or
11 residing or staying on the property; and (b) the scope of the land use changes. The underlying
12 facts affect the land resources, water resources, air quality, biological resources, transportation
13 and circulation, land use, public services, noise, and visual resources analyses in the Final EA.
14 Thus, the failure to adequately and accurately disclose the basic project components infects all
15 portions of the environmental review. The NOD and FONSI, therefore, should be vacated on
16 this basis as well.

17 **C. THE REVISED LAND USE MAP SHOWS THE REGIONAL DIRECTOR FAILED**
18 **TO ADEQUATELY ANALYZE ALL PROPOSED USES ON CAMP 4 AND THE**
19 **RESULTING JURISDICTIONAL AND LAND USE CONFLICTS.**

20 As previously stated, in examining the purposes for the land, the Regional Director must
21 determine the current uses of the property and then ascertain the tribe's plans for the property.
22 *Thurston County, Nebraska v. Great Plains Reg'l Director, BIA, 56 IBIA 296, 307 (2013); 25*
23 C.F.R. § 151.10(c). The uses of the property on the revised land use map are different than those
24 indicated in the Final EA as they show increased and new tribal facility development and
25 increased agricultural/residential development. (*Compare* AR0194.00030 (Ex. K hereto) and Ex.
26 J hereto.) Thus, in addition to the other deficiencies established by the County in its opening and
27 reply briefs regarding the Regional Director's inadequate analysis of the purposes criterion, the
28 revised land use map further shows that the Regional Director did not, as she could not, analyze
29 all proposed uses.

30 /////

1 The failure to completely analyze the proposed uses of Camp 4, in turn, affects the
2 analysis of the jurisdictional and land use conflicts under 25 C.F.R. § 151.10(f). *Thurston*
3 *County*, 56 IBIA at p. 308. Increased tribal facility development and increased residential
4 development would intensify the land use changes at the site, which are inconsistent with
5 surrounding uses. (Opening Brief at 7-8.) It thus would exacerbate the existing jurisdictional
6 problems and land use conflicts, and the Regional Director has not considered this additional
7 information.

8 **D. THE REVISED LAND USE MAP SHOWS THE REGIONAL DIRECTOR FAILED**
9 **TO ADEQUATELY ANALYZE THE ECONOMIC BENEFITS OF PROPOSED**
10 **BUSINESS USES ON CAMP 4.**

11 The Tribe and Regional Director have argued that the Tribe is not proposing any business
12 uses as part of the trust acquisition, narrowly defining the phrase “business uses” and, therefore,
13 the Regional Director did not have to address the economic benefits criterion. The record,
14 however, shows that the proposed development on Camp 4 includes the development of a Tribal
15 Facility that will hold special events and house 40 employees, which constitutes some business
16 use. (AR0194.00029.) The revised land use map now shows substantial increased development
17 of the tribal facility. This increased intensity further supports the County’s argument that the
18 Tribe must submit a proposed business plan and the Regional Director must analyze the
19 economic benefits of any business uses. 25 C.F.R. § 151.11(c).

20 **III. CONCLUSION.**

21 Based on the County’s opening brief, reply brief, and the foregoing supplemental reply
22 brief, Appellant County of Santa Barbara respectfully requests that the Assistant Secretary vacate
23 the NOD and FONSI and remand to the Regional Director for reconsideration under the
24 governing law.

25 Dated: March 11, 2016

26 Respectfully Submitted,
27 MICHAEL C. GHIZZONI, COUNTY COUNSEL

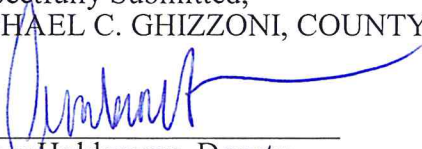
28 
Amber Holderness, Deputy

EXHIBIT I

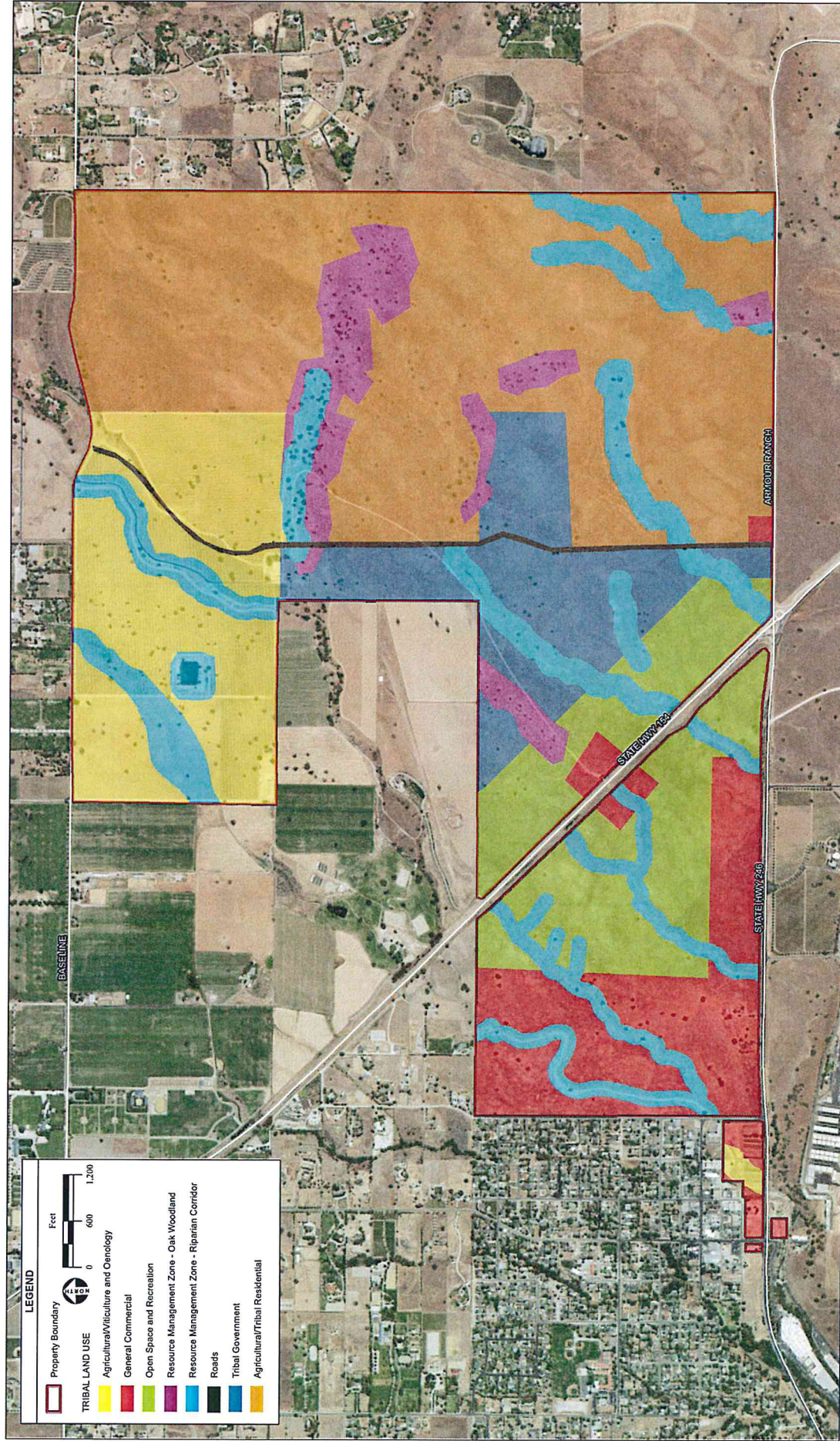
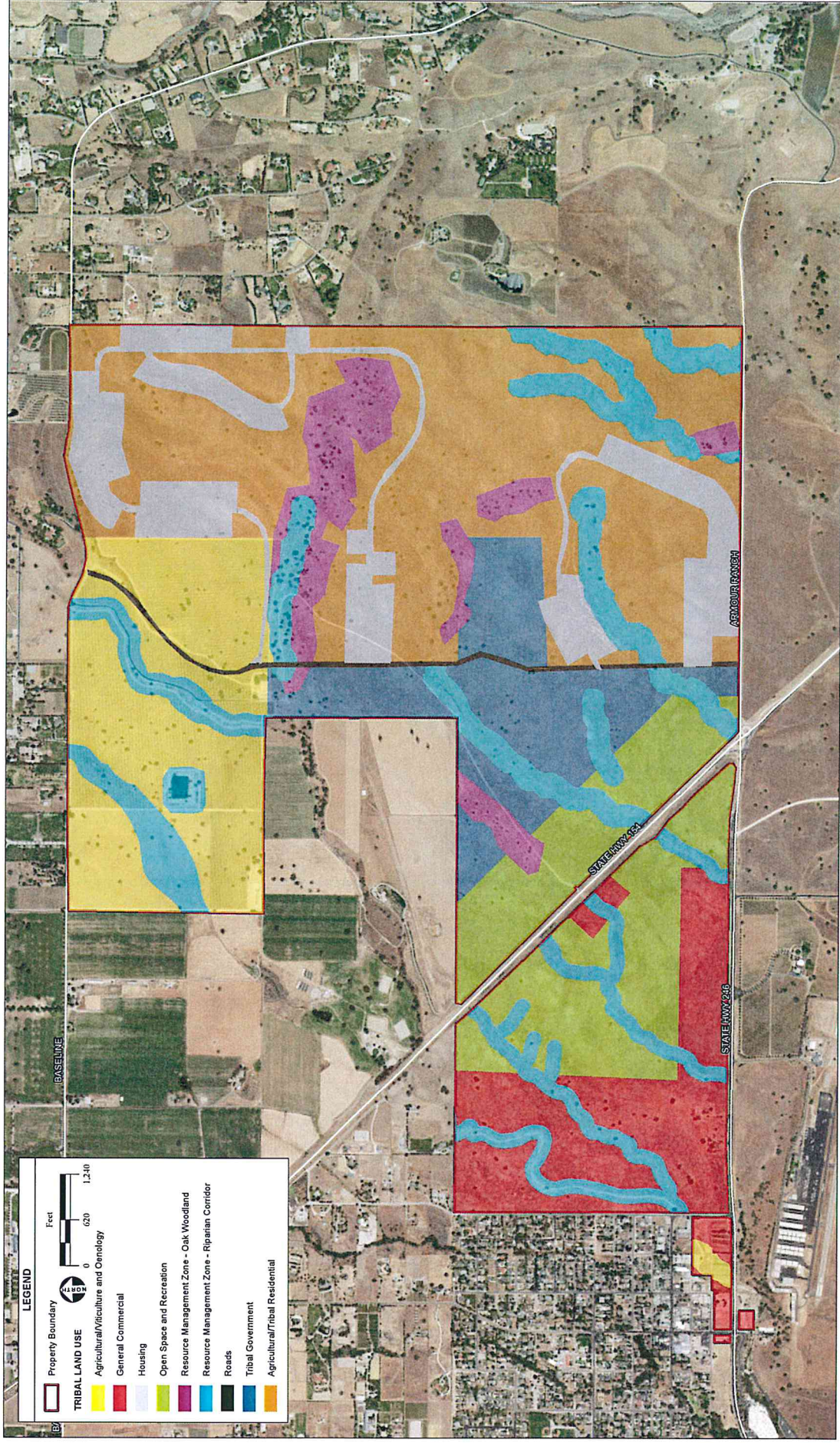


EXHIBIT J



LEGEND

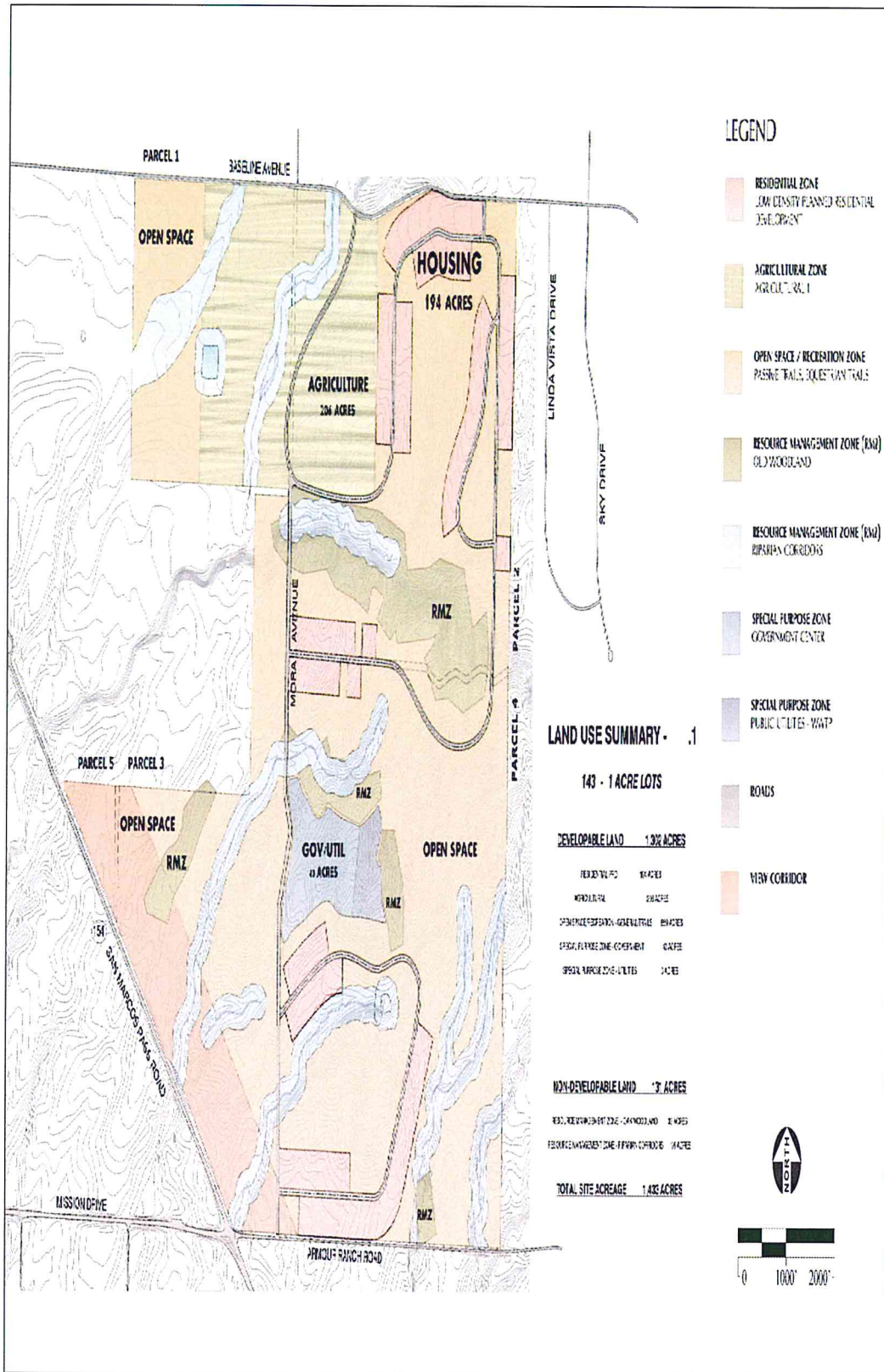
Property Boundary

Scale: 0, 620, 1,240 Feet

TRIBAL LAND USE

- Agricultural/Viticulture and Oenology
- General Commercial
- Housing
- Open Space and Recreation
- Resource Management Zone - Oak Woodland
- Resource Management Zone - Riparian Corridor
- Roads
- Tribal Government
- Agricultural/Tribal Residential

EXHIBIT K



1 MICHAEL C. GHIZZONI, COUNTY COUNSEL (SBN 149514)
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18 OLIVOS, SANTA YNEZ VALLEY
19 CONCERNED CITIZENS, ANNE (NANCY)
20 CRAWFORD-HALL, and SANTA YNEZ
21 VALLEY ALLIANCE,

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**APPELLANT COUNTY OF SANTA
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NOTICE OF DECISION ON THE
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CHUMASH INDIANS CAMP 4 FEE-
TO-TRUST APPLICATION AND
OCTOBER 17, 2014 FINDING OF
NO SIGNIFICANT IMPACT BY
PACIFIC REGIONAL DIRECTOR**

27 I, Natalie M. Warwick, declare that I am over the age of eighteen and not a party to
28 this cause. I am employed in, or a resident of the County of Santa Barbara, where the mailing
occurs. My business address is 105 E. Anapamu Street, Suite 201, Santa Barbara, CA 93101.

I further declare that on the 11th day of March, 2016, I delivered a true copy of the

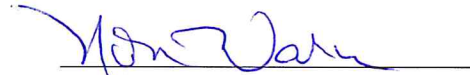
APPELLANT COUNTY OF SANTA BARBARA'S SUPPLEMENTAL REPLY BRIEF

1 IN SUPPORT OF APPEAL OF DECEMBER 24, 2014 NOTICE OF DECISION ON
2 THE SANTA YNEZ BAND OF CHUMASH INDIANS CAMP 4 FEE-TO-TRUST
3 APPLICATION AND OCTOBER 17, 2014 FINDING OF NO SIGNFICANT IMPACT
4 BY PACIFIC REGIONAL DIRECTOR to each of the persons named below, either by
5 depositing an appropriately-addressed copy in the United States mail, by email or both.

6 SEE ATTACHED DISTRIBUTION LIST

7
8 I declare under penalty of perjury that the foregoing is true and correct.

9 Executed this 11th day of March, 2016.

10 
11 Natalie M. Warwick

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<i>VIA EMAIL ONLY</i>	
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<p>Nicole Di Camillo, Linda Krop Counsel for Santa Ynez Valley Alliance ndicamillo@environmentaldefensecenter.org lkrop@environmentaldefensecenter.org</p>	<p>Lewis P. Geysler Counsel for Lewis P. Geysler and Robert B. Corlett lewpg@post.harvard.edu</p>
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