

1 Linda Krop (CA Bar No. 118773)
2 lkrop@environmentaldefensecenter.org
3 Nicole G. Di Camillo (CA Bar No. 283088)
4 ndicamillo@environmentaldefensecenter.org
5 ENVIRONMENTAL DEFENSE CENTER
6 906 Garden Street
7 Santa Barbara, California 93101
8 Phone: (805) 963-1622
9 Facsimile: (805) 962-3152

10 *Attorneys for*
11 SANTA YNEZ VALLEY ALLIANCE

12 **ASSISTANT SECRETARY - INDIAN AFFAIRS**
13 **UNITED STATES DEPARTMENT OF THE INTERIOR**

14 BRIAN KRAMER AND SUZANNE
15 KRAMER, COUNTY OF SANTA
16 BARBARA, CALIFORNIA,
17 NO MORE SLOTS, LEWIS P. GEYSER
18 AND ROBERT B. CORLETT,
19 PRESERVATION OF LOS OLIVOS,
20 SANTA YNEZ VALLEY CONCERNED
21 CITIZENS, ANNE (NANCY)
22 CRAWFORD-HALL and SANTA YNEZ
23 VALLEY ALLIANCE,
24 APPELLANTS,

25 v.

26 PACIFIC REGIONAL DIRECTOR,
27 BUREAU OF INDIAN AFFAIRS,
28 APPELLEE.

Docket No: _____

**APPELLANT SANTA YNEZ
VALLEY ALLIANCE OPENING
BRIEF**

TABLE OF CONTENTS

INTRODUCTION.....1

JURISDICTION AND STANDING1

FACTUAL BACKGROUND.....2

ARGUMENT.....4

I. The BIA Cannot Approve a Fee-to-Trust Application where the Underlying NEPA Review of the Proposed Project is Inadequate.....8

A. An EIS is required for the Proposed Project Due to “Substantial Questions” Raised Concerning Potentially Significant Impacts of the Project5

1. Conversion of Such a Large Amount of Agricultural Land at a Bare Minimum Raises a Substantial Question as to Impacts to Agricultural Resources.....7

2. Numerous Substantial Questions have been Raised Concerning Potentially Significant Impacts to Biological Resources, Warranting an EIS to Fully Evaluate these Potential Impacts.....7

3. Substantial Questions have been Raised Concerning the Proposed Project’s Potentially Significant Cumulative Impacts, Warranting an EIS to Fully Evaluate these Potential Impacts.....9

4. An EIS is required because Substantial Questions have been Raised as to the Ability of the Proposed Mitigation Measures to Reduce Impacts to Below a Level of Significance.....10

B. The Final EA is Inadequate to Support a FONSI.....12

1. The Analysis of Impacts is Flawed Because it Fails to Analyze Conflicts with Existing Land Use and Environmental Protection Laws and Policies, in Violation of NEPA.....12

a. The Analysis of Impacts to Agricultural Resources is Insufficient and Fails to Address Conflicts with Existing Land Use Policies Addressing Agricultural Preservation.....15

b. The Analysis of Impacts to Biological Resources is Insufficient and Fails to Address Conflicts with Existing Policies Addressing Biological Resources Preservation.....17

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27
28

2. The Analysis of Cumulative Impacts is Insufficient.....18

**3. The Analysis of Alternatives is Inadequate Because the Final
EA Failed to Include a Reasonable Range of
Alternatives.....20**

**II. BIA Failed to Adequately Consider whether the Project would
Create Potential Conflicts of Land Use.....23**

**III. BIA Failed to Give Heightened Consideration to the Local
Jurisdiction’s Concerns, Given the Off-Reservation Location of the
Land.....24**

CONCLUSION.....25

1 **INTRODUCTION**

2 The Santa Ynez Valley Alliance (“Alliance”) appeals (1) the December 24,
3 2014 NOTICE OF DECISION (“NOD”) issued by the Pacific Regional Director of
4 the Bureau of Indian Affairs (“BIA”), accepting into trust for the Santa Ynez Band
5 of Chumash Mission Indians (“Chumash Tribe”) certain property in Santa Barbara
6 County, California, commonly known as the “Camp 4” property;¹ and (2) the
7 October 17, 2014 issuance of a “Finding of No Significant Impact [FONSI] for the
8 Proposed Santa Ynez Band of Chumash Indians Camp 4 Fee-To-Trust Project” and
9 the underlying Final Environmental Assessment (“EA”).

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

19 **JURISDICTION AND STANDING**

20 The Alliance appeals the NOD and FONSI pursuant to 43 C.F.R. Part 4 and
21 25 C.F.R. Part 2. The Alliance may appeal this case, as an interested party that is
22 affected by BIA’s decision and could be adversely affected by the decision in this
23 appeal. 43 C.F.R. § 4.331; 25 C.F.R. § 2.2. *See Preservation of Los Olivos v. U.S.*
24 *Dep’t of Interior* (C.D. Cal. 2008) 635 F. Supp. 2d 1076, 1090 (upholding citizens’
25 groups’ interest in challenging fee-to-trust transfer based on environmental and
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27 ¹ AR0123.00001-AR0123.00029.
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1 economic concerns, based on “the plain language of [BIA’s] very broad and
2 permissive regulations on standing”).

3 **FACTUAL BACKGROUND**

4 The Chumash Tribe initially submitted its fee-to-trust application for the
5 Camp 4 Property in July, 2013. The Camp 4 Property, owned by the Tribe in fee
6 simple, consists of five parcels: Assessor Parcel Numbers 141-151-051, 141-140-
7 010, 141-230-023, and 141-240-002, totaling approximately 1433 acres near the
8 town of Santa Ynez, California. The Camp 4 Property is located approximately
9 1.75 miles from the Chumash Reservation and does not border the Reservation.
10 The Camp 4 Property is within the “Santa Ynez Valley Planning Area” of Santa
11 Barbara County, is currently zoned for agriculture in its entirety, and is currently
12 under a Williamson Act Contract until December 31, 2022.

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

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

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

24 After withdrawing the Plan, the Chumash Tribe submitted an amended fee-
25 to-trust application to the BIA for the Camp 4 Property in November 2013. The
26 amended fee-to-trust application was submitted, pursuant to BIA Land
27

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

6 In summary, under both Alternatives A and B, the entire 1433 acres of the
7 Camp 4 Property would be taken into trust.² Under this alternative, 1227 acres of
8 land zoned agriculture would be converted to other, non-agricultural uses—nearly
9 86% of the property. AR0194.00020-22. As with Alternative A, 1227 acres—
10 nearly 86%—of the land zoned agriculture would be converted to other, non-
11 agricultural uses under Alternative B.³ AR0194.00028-31.

12 The Alliance submitted timely written comments on the Final EA on July
13 10, 2014, highlighting inadequacies in the Final EA and raising substantial
14 questions concerning impacts to biological resources, loss of agricultural land, land
15 use conflicts, and cumulative impacts.⁴ Despite the fact that the Alliance and
16 others submitted comments that at a minimum raise substantial questions as to the
17 potentially significant impacts of the project, the BIA subsequently issued a
18 FONSI on October 17, 2014, claiming that under either alternative described in the
19 Final EA, the project was “not a federal action significantly affecting the quality of
20 the human environment.” AR0237.00001. The BIA then issued its NOD
21
22

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

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

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

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

3 **ARGUMENT**

4 The BIA has inadequately considered several of the required factors under
5 25 C.F.R. § 151.10-151.11, and its decision to accept the property into trust based
6 on insufficient evaluation of these factors was in error. Specifically, BIA failed to
7 adequately consider (1) compliance with NEPA; (2) the location of the land
8 relative to the reservation, and the implications of that location on the local
9 jurisdiction, and (3) actual and potential land use conflicts.

10 **I. The BIA Cannot Approve a Fee-to-Trust Application where the 11 Underlying NEPA Review of the Proposed Project is Inadequate.**

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

21 As described below in detail, the environmental review conducted by BIA
22 was entirely inadequate. An EA is woefully inadequate for a project of this scope
23 and scale, where numerous substantial questions have been raised as to the
24 potentially significant impacts of the project. An Environmental Impact Statement
25 (“EIS”) is required to fully analyze the potentially significant impacts of the
26 proposed project. Unless and until an adequate EIS is developed, the BIA will be
27 unable to satisfy its requirement to consider whether compliance with NEPA was
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1 met, and therefore cannot approve the fee-to-trust application. *See, e.g., County of*
2 *San Diego, et al. v. Pacific Regional Director, BIA*, 58 IBIA 11, 35 (2013 WL
3 5288995, at *18) (vacating and remanding fee-to-trust acquisition in part based on
4 inadequate environmental analysis, and ordering supplementation of EA to
5 adequately address cumulative impacts analysis).

6 **A. An EIS is required for the Proposed Project Due to “Substantial**
7 **Questions” Raised Concerning Potentially Significant Impacts of the**
8 **Project.**

9 An EIS is required whenever there are “substantial questions” raised as to
10 whether a project may have significant effects. *See Anderson v. Evans* (9th Cir.
11 2004) 371 F.3d 475, 488 (“to prevail on the claim that the federal agencies were
12 required to prepare an EIS, the plaintiffs need not demonstrate that significant
13 effects will occur. A showing that there are *substantial questions* whether a project
14 may have a significant effect on the environment is sufficient.”) (emphasis in
15 original) (internal quotations and citations omitted). *See also Sierra Club v. U.S.*
16 *Forest Serv.* (9th Cir. 1988) 843 F.2d 1190, 1193 (“If substantial questions are
17 raised whether a project may have a significant effect upon the human
18 environment, an EIS must be prepared.”) (internal quotations and citations
19 omitted).

20 As discussed in detail below, through numerous credible comments, the
21 Alliance and others have raised *at a minimum* substantial questions regarding the
22 project’s environmental impacts. The Alliance raised substantial questions
23 concerning impacts to agricultural resources, biological resources, conflicts with
24 land use and environmental protection policies, cumulative impacts and mitigation
25 measures. Given the substantial questions raised by the Alliance and others, an EA
26 simply does not suffice for this project. *See, e.g., Anderson, supra*, 371 F.3d at 494
27 (lengthy EA still not sufficient when EIS was required) (emphasis added):
28

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

11 In addition, the substantial questions raised by commenters clearly
12 demonstrate that the potential impacts of the project are controversial. That is,
13 “substantial dispute exists as to the size, nature, or effect” of the project. *Found.*
14 *for N. Am. Wild Sheep v. U.S. Dep’t of Agr.* (9th Cir. 1982) 681 F.2d 1172, 1182.
15 NEPA is clear: when “(t)he degree to which the effects on the quality of human
16 environment are likely to be highly controversial,” an EIS is mandated. 40 C.F.R.
17 § 1508.27(b)(4); *Wild Sheep, supra*, 681 F.2d at 1183 (knowledgeable
18 disagreement with EA’s conclusions regarding the likely effects of project
19 warranted preparation of an EIS). *See also Sierra Club, supra*, 843 F.2d at 1193
20 (“affidavits and testimony of conservationists, biologists, and other experts who
21 were highly critical of the EAs and disputed the [agency’s] conclusion that there
22 would be no significant effects...[is] precisely the type of ‘controversial’ action for
23 which an EIS must be prepared.”)

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

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

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

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

21 The Alliance and others raised numerous substantial questions as to the
22 potential for significant biological impacts of the proposed project. The following
23 issues were raised in depth in the Alliance’s comment letter, which *at a minimum*
24 raise substantial questions as to potential significant impacts to biological
25 resources, warranting development of an EIS: (1) impacts to wildlife corridor
26 movements due to impacts that span the project site and due to inappropriate
27 identification of a corridor as a degraded stream channel⁵; (2) impacts to state-

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⁵AR0195.00175, AR0195.00184.

1 protected birds due to the complete failure to address potential impacts to state-
2 listed species, despite evidence submitted that some species are, or may be, present
3 on the project site⁶; (3) inadequate mitigation for impacts to nesting and roosting
4 birds, including federally-regulated bald eagles, golden eagles and mountain
5 plovers, due to incomplete surveying⁷; (4) impacts to oak trees individually due to
6 inadequate protective measures⁸; (5) impacts to oak savannah habitat (oak trees in
7 large concentrations, constituting a unique habitat) due to inappropriate mapping of
8 such habitat in only part of the project site⁹; (6) failure to address the impacts of
9 night lighting on the property to wildlife on adjacent areas¹⁰; (7) impacts caused by
10 potential underestimation of species in biological assessment studies, due to
11 botanical surveys being done in below-average rainy seasons¹¹; (8) impacts caused
12 by the inappropriately narrow definition of “wetland,” resulting in areas which
13 would otherwise be identified and protected as wetlands by the County or other
14 agencies not being so identified¹²; and (9) impacts caused by the failure to require
15 buffers around wetlands that would protect those wetlands from damage caused by
16 development.¹³

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

23 ⁶AR0195.00177-78.

24 ⁷AR0195.00175.

25 ⁸AR0195.00176.

26 ⁹AR0195.00176, AR0195.00178.

27 ¹⁰AR0195.00176.

28 ¹¹AR0195.00175.

¹²AR0195.00178.

¹³AR0195.00179.

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

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

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

- 14 1. Cumulative impacts of the proposed project with other development
15 on nearby tribal land, including (1) a 6.9-acre property owned by the
16 Chumash Tribe which was recently taken into trust; (2) expanded
17 development on the Chumash Tribe’s existing reservation, including
18 a major expansion to the casino and hotel, anticipated to bring in an
19 additional 1,200 visitors daily¹⁴, and (3) the potential for other
20 reasonably foreseeable development on the reservation, including for
21 example, redevelopment of existing tribal housing that may no longer
22 be needed for housing after development of the new housing
23 identified in the proposed project.¹⁵
- 24 2. Cumulative impacts of the proposed project and impacts of possible
25 renewal of the TCA Plan.¹⁶
- 26 3. Cumulative impacts of the direct conversion of agricultural land of
27 the proposed project combined with the potential for the indirect
28 effect of encouraging conversion of other local agricultural land.¹⁷

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

15 AR0195.00186- AR0195.00187.

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

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

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

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

23 An EIS is required when a project’s proposed mitigation measures
24 insufficiently reduce the impacts of the project. *Wild Sheep, supra*, 681 F.2d at
25 1182 (mitigation measures in an EA were insufficient to avoid preparation of an
26 EIS where substantial questions were raised as to the efficacy of the measures in

27 ¹⁷ AR0195.00185- AR0195.00186.

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

8 Likewise in this case, numerous commenters have raised concerns that
9 proposed mitigation measures are insufficient to reduce the impacts of the project
10 to below a level of significance. The following are issues raised by the Alliance:
11 (1) mitigation measures for impacts to oak trees are insufficient due to inadequate
12 consideration of the constituents of oak savannah habitat and a failure to consider
13 genetic integrity in replanting schemes, resulting in still-significant impacts to oak
14 trees and oak savannah habitat¹⁸; (2) mitigation measures aimed at addressing
15 impacts to “Waters of the United States” are insufficient because they do not
16 address impacts to all types of wetlands¹⁹; (3) a mitigation measure of possibly
17 changing the project scope and location of housing developments due to potential
18 impacts to Vernal Pool Fairy Shrimp (“VPFS”) is inappropriately delayed and
19 unspecified based on future determinations by the U.S. Fish and Wildlife Service
20 of the location of VPFS critical habitat²⁰; and (4) the project’s inappropriate
21 reliance on County mitigation measures to protect sensitive habitats supporting
22 locally rare species, which the Final EA claims in other places will no longer apply
23 after the fee-to-trust transfer due to the project site no longer being under County
24 jurisdiction.²¹

25 _____
¹⁸AR0195.00179- AR0195.00180.

26 ¹⁹AR0195.00180-AR0195.00181.

27 ²⁰AR0195.00176.

28 ²¹AR0195.00179.

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

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

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

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

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

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

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

10 The Final EA is fundamentally flawed in skirting this analysis by
11 presupposing approval of the underlying project (i.e., the land will be in trust
12 status), and using that status as the baseline for impacts analysis. This approach
13 was rejected in *N. Plains Res. Council, Inc. v. Surface Transp. Bd.* (9th Cir. 2011)
14 668 F.3d 1067, 1084–85 (holding that evaluating impacts based on future changes,
15 such as mitigation measures, as opposed to evaluating impacts based on the
16 *existing* environmental setting “presupposes approval,” and is therefore
17 inappropriate under NEPA, and noting that, “NEPA obligations to determine the
18 projected extent of the environmental harm to enumerated resources *before* a
19 project is approved.”) (emphasis original). *See also Half Moon Bay Fishermans’*
20 *Mktg. Ass’n v. Carlucci:*

21 ‘NEPA clearly requires that consideration of environmental impacts of
22 proposed projects take place *before* [a final decision] is made.’
23 [CITATION]. *Once a project begins, the ‘pre-project environment’ becomes*
24 *a thing of the past, thereby making evaluation of the project’s effect on pre-*
25 *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.

26 ²³ AR0194.00140.

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

1 857 F.2d 505, 510 (9th Cir. 1988) (emphasis added). *See also LaFlamme v.*
2 *F.E.R.C.*, 852 F.2d 389, 400 (9th Cir. 1988) (“NEPA clearly requires that
3 consideration of the environmental impacts of proposed projects take place *before*
4 any [] decision is made. ‘[T]he very purpose of NEPA’s requirement that an EIS be
5 prepared...is to obviate the need for speculation by insuring that available data is
6 gathered and analyzed prior to the implementation of the proposed action’”)
7 (emphasis in original).

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

19 Nowhere do the EAs mention the impact of logging upon *California’s water*
20 *quality standards*. Because substantial questions have been raised
21 concerning the potential adverse effects of harvesting these timber sales, an
22 EIS should have been prepared. [CITATION]. The Forest Service’s decision
23 not to do so was unreasonable. *Id.* at 1177. It failed to account for factors
24 necessary to determine whether significant impacts would occur. Therefore,
25 its decision was not “fully informed and well-considered.” [CITATIONS].
26 843 F.2d at 1195 (emphasis added). As in *Sierra Club*, the BIA’s failure to
27 adequately analyze whether the proposed project might violate local requirements
28 imposed for the protection of the environment makes the EA inadequate.

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

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

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

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

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

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

25 See Exhibit C – Santa Ynez Valley Community Plan at page 8, citing *Santa Barbara County Comprehensive Plan, Land Use Element.*

26 *Id.* at 73 (Policy LUA-SYV-2) (emphasis added).

27 AR0127.00133 (emphasis added), AR0194.01836.

1 would result if an incompatible land use within the project parcels would result in
2 the inability of the County to continue to implement existing land use policies
3 *outside of the project boundaries.*”²⁸

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

9 Conflicts of Federal Proposal With Land Use Plans, Policies or Controls.
10 How should an agency handle potential conflicts between a proposal and the
11 objectives of Federal, state or local land use plans, policies and controls for
12 the area concerned?... The agency should first inquire of other agencies
13 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.*

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

25
26
27 ²⁸ AR0194.00140 (emphasis added).
28

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

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

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

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

29 ²⁹AR0195.00177- AR0195.00178.

30 ³⁰AR0195.00178.

31 ³¹AR0195.00198-AR0195.00205.

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

3 **2. The Analysis of Cumulative Impacts is Insufficient.**

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

13 First, the EA failed to identify and analyze potentially cumulative impacts
14 caused by impacts of the proposed project and other reasonably foreseeable future
15 actions, as it is required to do under NEPA. *See Native Ecosystems, supra*, 304
16 F.3d at 895-96 (“Given that so many more EAs are prepared than EISs, adequate
17 consideration of cumulative effects requires that EAs address them fully.
18 [CITATIONS]...without a consideration of individually minor but cumulatively
19 significant effects ‘it would be easy to underestimate the cumulative impacts of [a
20 project]..., and of other reasonably foreseeable future actions, on the
21 [environment].’ [CITATIONS].”) The agency has the burden of identifying and
22 analyzing potential future projects that warrant a cumulative effects analysis. *See*
23 *Te-Moak Tribe, supra*, 608 F.3d at 605 (holding that the burden is on the agency to
24 identify cumulative impacts, stating that Plaintiffs “need not show what cumulative
25 impacts would occur. *To hold otherwise would require the public, rather than the*
26 *agency, to ascertain the cumulative effects of a proposed action...* Such a
27 requirement would thwart one of the ‘twin aims’ of NEPA-to ‘ensure [] that the
28

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

5 Moreover, even when presented with substantial questions regarding
6 numerous potential cumulative impacts, BIA failed to adequately analyze those
7 potential impacts in the EA. There is no analysis of potential cumulative impacts
8 associated with (1) the expanded Chumash Hotel and Casino on the Chumash
9 Reservation; (2) another Chumash Tribe-owned property that was recently taken
10 into trust, on which a museum, park, cultural center and offices are planned³²; or
11 (3) potential renewal of the TCA Plan, described above.³³ Under NEPA, there
12 need not be a finalized project in order to trigger the requirement to address
13 cumulative impacts, let alone a project that was already approved. *See Native*
14 *Ecosystems, supra*, 304 F.3d at 895-96. *See N. Plains, supra* 668 F.3d at 1078–79.
15 *See also Te-Moak, supra*, 608 F.3d at 607 (holding that an EA’s cumulative
16 impacts analysis was inadequate for failing to adequately address the cultural
17 impacts of *reasonably foreseeable* mining activities in the cumulative effects area)
18 (emphasis added).

19 Likewise, the Final EA also failed to analyze the potential for cumulative
20 impacts caused by the proposed project’s indirect impacts on other local
21 agricultural resources. *See, e.g., TOMAC v. Norton* (D.D.C. 2003) 240 F. Supp. 2d
22 45, 50, *aff’d sub nom. TOMAC, Taxpayers of Michigan Against Casinos v. Norton*

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

26 ³³ Reinstatement of the TCA Plan is an exceedingly foreseeable possibility that warrants much
27 greater review in light of the potential cumulative impacts of the proposed project combined with the
28 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.

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

16
17 **3. The Analysis of Alternatives is Inadequate Because the Final
EA Failed to Include a Reasonable Range of Alternatives.**

18 A fundamental problem with the Final EA is that it does not analyze a
19 reasonable range of alternatives. *See Klamath-Siskiyou Wildlands Ctr. v. U.S.*
20 *Forest Serv.* (E.D. Cal. 2004) 373 F. Supp. 2d 1069, 1088 (“NEPA mandates that
21 an agency consider and discuss the range of all reasonable alternatives to the
22 proposed action...”). 42 U.S.C. § 4332(2)(E); 40 C.F.R. § 1508.9(b). The purpose
23 of this requirement is to identify alternatives “that will avoid or minimize adverse
24 effects of [] actions upon the quality of the human environment.” 40 C.F.R. §
25 1500.2(e).

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

4 First, while an agency is not required to analyze alternatives that do not meet
5 the purpose and need of the project, “[n]or, however, can the agency narrowly
6 define its purpose and need so as to winnow down the alternatives until only the
7 desired one survives.” *Klamath-Siskiyou*, *supra*, 373 F. Supp. 2d at 1088. The
8 BIA has done exactly this, foreshortening the available alternatives for the project
9 by inaccurately claiming that the primary purpose of the proposed project—to
10 provide tribal housing—can in no way be accomplished without the fee-to-trust
11 transfer.³⁴ The Final EA fails to analyze alternatives that would accomplish
12 residential development without a fee-to-trust transfer, e.g., housing allowed under
13 existing County jurisdiction³⁵, the possibility of pursuing County processes for
14 rezoning parts of the property that would allow for greater development than is
15 currently allowed, and development or re-development of housing on other
16 existing Chumash Tribe land, including the Chumash reservation.³⁶

17 The range of alternatives is also inadequate due to the fact that the impacts
18 to agricultural resources are the same for both Alternatives A and B. One of the
19 major impacts of the proposed project is the conversion of 1411.1 acres from
20 agriculturally zoned land to largely non-agricultural land. In *Klamath-Siskiyou*, the
21 court rejected as inadequate an EA that only analyzed two alternatives besides the
22 no-action alternative for a timber harvest and watershed improvement project. The
23

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

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

³⁶ AR0195.00173-174.

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

7 This narrow range of alternatives fails to satisfy NEPA’s requirement that a
8 reasonable range of alternatives be analyzed, or that alternatives be identified that
9 avoid or minimize the project’s adverse effects. Based on impacts to agriculture
10 and other significant impacts of the proposed project, the BIA should have
11 included additional alternatives that would analyze the possibility of obtaining the
12 project objectives: (1) without a fee-to-trust transfer and (2) with less impact to
13 agricultural resources (e.g., through reduction, or clustering of housing
14 development, off-site housing, etc.). *See W. Watersheds Project v. Abbey* (9th Cir.
15 2013) 719 F.3d 1035, 1050–53 (emphasis added):

16 [T]he action alternatives each considered issuing a new grazing permit *at the*
17 *same grazing level as the previous permit*...we do question how an agency
18 can make an informed decision on a project’s environmental impacts when
19 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.

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

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

26
27 ³⁷ AR0194.00020, AR0194.00029.

1 25 C.F.R. § 151.10(h) that the proposed project in the Camp 4 FTT application
2 complies with NEPA. The BIA’s therefore decision must be vacated and
3 remanded.

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

6 Under 25 CFR § 151.10(f), BIA is charged with considering “potential
7 conflicts of land use,” which it has failed to do. The proposed project would
8 dramatically change the existing land use on the Camp 4 Property. As discussed
9 above, the current zoning is AG-II-100, which requires a minimum parcel size of
10 100 acres, with one one-family residential dwelling unit allowed per parcel.³⁸ The
11 areas surrounding the Camp 4 Property are likewise rural and agricultural. The
12 proposed project—consisting of 143 homes in addition to other facilities and
13 infrastructure—would increase development by at least ten times that which is
14 currently allowed under the County’s land use policies.

15 Despite this, the NOD cursorily states that the intended purposes of the
16 project, “tribal housing, land consolidation, and land banking are not inconsistent
17 with the surrounding uses.” AR0123.00022. This statement is simply incorrect.
18 The NOD fails to discuss, for example, how the amount of housing, density of
19 housing, required roads and infrastructure, parking facilities, etc. compare in scale
20 and density to the surrounding rural area. The NOD simply parrots the submitted
21 application, not evincing any evidence of analysis beyond the unsubstantiated
22 claims in the application³⁹:

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

26 _____
27 ³⁸ See Exhibit D at page 2-18.

28 ³⁹ Camp 4 Fee-to-Trust Application, AR0032.00012.

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

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

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

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

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

27 ⁴⁰ AR0123.00024.

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

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

15 CONCLUSION

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

26
27 ⁴¹ The Camp 4 Fee-to-Trust Application states that “the property is adjacent to Highway 154 and is a
28 mere 1.6 miles from the Reservation.” AR0032.00005.

Respectfully submitted this 15th day of December, 2015.

/S/ Linda Krop

Linda Krop

/S/ Nicole Di Camillo

Nicole Di Camillo

ENVIRONMENTAL DEFENSE CENTER
906 Garden Street
Santa Barbara, California 93101
Telephone: (805) 963-1622
Facsimile: (805) 962-3152

Attorneys for
SANTA YNEZ VALLEY ALLIANCE

EXHIBIT A

ENVIRONMENTAL EVALUATION
SANTA YNEZ BAND OF CHUMASH INDIANS
HOTEL EXPANSION PROJECT



JULY 2014

LEAD AGENCY:

Santa Ynez Band of Chumash Indians
100 Via Juana Lane
Santa Ynez, CA 93460
(805) 688-7997
www.santaynezchumash.org



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PREPARED BY:

Analytical Environmental Services
1801 7th Street, Suite 100
Sacramento, CA 95811
(916) 447-3479
www.analyticalcorp.com



TABLE OF CONTENTS

CHUMASH HOTEL EXPANSION PROJECT ENVIRONMENTAL EVALUATION

1.0	INTRODUCTION.....	1-1
1.1	Introduction	1-1
1.2	Background.....	1-4
1.3	Purpose and Need for the Proposed Project	1-4
1.4	EE Process.....	1-4
1.3	EE Organization	1-5
2.0	PROJECT DESCRIPTION	2-1
2.1	Project Setting.....	2-1
2.2	Existing Setting.....	2-1
2.3	Project Characteristics	2-2
2.4	Project Construction	2-10
2.5	Future Operation.....	2-11
3.0	ENVIRONMENTAL ANALYSIS	3.1-1
3.1	Introduction	3.1-1
3.2	Water Resources	3.2-1
3.3	Air Quality and Greenhouse Gas Emissions	3.3-1
3.4	Hazards and Hazardous Materials	3.4-1
3.5	Noise.....	3.5-1
3.6	Traffic and Circulation	3.6-1
3.7	Land Use and Population and Housing	3.7-1
3.8	Aesthetics	3.8-1
3.9	Biological Resources	3.9-1
3.10	Public Services and Utilities and System Service Systems	3.10-1
3.11	Growth Inducing and Cumulative Off-Reservation Environmental Impacts	3.11-1
4.0	REFERENCES.....	4-1

LIST OF FIGURES

1-1	Regional Location	1-2
1-1	Site and Vicinity.....	1-3
2-1	Aerial Photograph	2-3
2-2	Proposed Project Site Plan	2-4
3.2-1	Santa Ynez Watershed	3.2-7
3.2-2	FEMA Flood Zones	3.2-13
3.7-1	Land Use Designations	3.7-5

3.7-2	Zoning Designations	3.7-6
3.8-1a	Representative Views of the Existing Project Site.....	3.8-4
3.8-1b	Representative Views of the Existing Project Site.....	3.8-5
3.8-2a	Representative Views of the Proposed Project Site	3.8-8
3.8-2b	Representative Views of the Proposed Project Site	3.8-9

LIST OF TABLES

2-1	Chumash Hotel Expansion Project Components	2-2
2-2	Summary of Potable Water Demands	2-7
3.3-1	NAAQS and Associated Violation Criteria	3.3-2
3.3-2	Attainment Status	3.3-9
3.3-3	Greenhouse Gas CO ₂ Equivalent	3.3-11
3.3-4	Construction Emissions.....	3.3-13
3.3-4	Operation Emissions	3.3-14
3.4-1	SWRCB Geotracker Data	3.4-5
3.5-1	Federal Construction Noise Thresholds	3.5-1
3.5-2	Federal Noise Abatement Criteria Hourly A-Weighted Sound Level Decibels.....	3.5-3
3.5-3	Definition of Acoustical Terms	3.5-4
3.5-4	Typical A-Weighted Sound Levels	3.5-5
3.5-5	Vibration Source Levels for Construction Equipment.....	3.5-7
3.5-6	Typical Construction Noise Levels	3.5-10
3.6-1	Study Intersection Existing (2014) Peak Hour Conditions	3.6-5
3.6-2	Study Roadway Segment Existing (2014) Peak Hour Conditions	3.6-6
3.6-3	Baseline Study Intersection Conditions (2016) Peak Hour Conditions	3.6-6
3.6-4	Baseline Roadway Segment Conditions (2016) Peak Hour Conditions	3.6-7
3.6-5	Trip Generation Rates and Vehicle Trips.....	3.6-8
3.6-6	Study Intersection Opening Day (2016) Peak Hour Conditions	3.6-9
3.6-7	Opening Day Roadway Segment (2016) Peak Hour Conditions	3.6-10
3.7-1	Regional Population	3.7-7
3.7-2	Population Estimated From 2000 to 2010.....	3.7-7
3.7-3	Population Growth Rates	3.7-8
3.7-4	Regional Housing.....	3.7-8
3.7-5	Regional Population.....	3.7-9
3.9-1	Regional Occurring Special-Status Species with the Potential to Occur Off- Reservation	3.9-8
3.11-1	Near-Term Approved/Pending Santa Ynez Valley Projects	3.11-2
3.11-2	2030 Operation Emission – Proposed Project	3.11-6
3.11-3	Estimated Project-Related GHG Emissions	3.11-8
3.11-4	Applicable CAS Reduction Strategies and Project Consistency	3.11-8
3.11-5	Study Intersections Cumulative (2030) Peak Hour Conditions	3.11-11
3.11-6	Cumulative Roadway Segments Conditions (2030) Peak Hour Conditions	3.11-11
3.11-7	Cumulative with Project Study Intersections (2030) Peak Hour Conditions	3.11-12
3.11-8	Cumulative with Project Roadway Segments (2030) Peak Hour Conditions	3.11-12
3.11-9	Proportionate Share Percentages.....	3.11-20

APPENDICES

- Appendix A – Environmental Impact Analysis Checklist
- Appendix B – Water Feasibility Technical Analysis
- Appendix C – Special Status Species Table
- Appendix D – Air Quality Emissions Analysis
- Appendix E – Traffic Impact Study
- Appendix F – Chumash Water Reclamation Facility Expansion Plan

SECTION 1.0

INTRODUCTION

1.1 INTRODUCTION

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

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

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

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

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

EXHIBIT B

**INDIAN AFFAIRS
NATIONAL ENVIRONMENTAL POLICY ACT
(NEPA) GUIDEBOOK**

59 IAM 3-H



**DIVISION OF
ENVIRONMENTAL AND CULTURAL
RESOURCES MANAGEMENT**

AUGUST 2012

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

Release #12-32; replaces 2005 version

TABLE OF CONTENTS

SECTION 1	INTRODUCTION	1
1.1	GENERAL	1
1.2	AUTHORITIES AND GUIDANCE	1
SECTION 2	NEPA AND BIA DECISION-MAKING	2
2.1	NEPA PROCESS	2
2.2	DOCUMENTS USED TO COMPLY WITH NEPA	5
2.3	TRIBAL INVOLVEMENT	6
2.4	PUBLIC INVOLVEMENT	7
2.5	SEQUENCING NEPA WITH OTHER RELATED LAWS	7
SECTION 3	FEDERAL ACTIONS AND NEPA	8
3.1	ACTIONS REQUIRING NEPA COMPLIANCE.....	8
3.2	ACTIONS NOT REQUIRING NEPA COMPLIANCE	9
3.3	ACTIONS EXEMPT FROM NEPA AND EMERGENCY ACTIONS	9
SECTION 4	CATEGORICAL EXCLUSIONS (CE).....	11
4.1	GENERAL	11
4.2	IDENTIFICATION	11
4.3	APPLICATION OF EXTRAORDINARY CIRCUMSTANCES.....	11
4.4	ENDANGERED SPECIES AND HISTORIC PROPERTY CONSULTATION.....	13
SECTION 5	USING EXISTING ENVIRONMENTAL DOCUMENTS	14
5.1	GENERAL	14
5.2	INCORPORATION BY REFERENCE	14
5.3	TIERING	14

5.4 SUPPLEMENTATION	15
5.5 ADOPTING ANOTHER AGENCY’S NEPA ANALYSIS	15
5.6 COMBINING DOCUMENTS	16
SECTION 6 ENVIRONMENTAL ASSESSMENTS (EA).....	17
6.1 GENERAL	17
6.2 PUBLIC INVOLVEMENT	17
6.3 EA PREPARATION.....	17
6.4 CONTENTS AND FORMAT OF AN EA	18
6.5 EA PROCESSING	22
6.6 PUBLIC REVIEW.....	23
6.7 CONTENTS OF THE NOTICE OF AVAILABILITY (NOA).....	23
6.8. CONTENTS OF THE FINDING OF NO SIGNIFICANT IMPACT (FONSI)	23
SECTION 7 ENVIRONMENTAL EFFECTS AND SIGNIFICANCE	25
7.1 GENERAL	25
7.2 DIRECT AND INDIRECT EFFECTS.....	25
7.3 CUMULATIVE EFFECTS	25
7.4 DISPROPORTIONATE EFFECTS (Environmental Justice)	26
7.5 SIGNIFICANCE OF EFFECTS	26
SECTION 8 ENVIRONMENTAL IMPACT STATEMENTS (EIS).....	28
8.1 GENERAL	28
8.2 DEFINING RESPONSIBILITY.....	28
8.3 PUBLIC INVOLVEMENT	29
8.4 CONTENTS AND FORMAT OF AN EIS	31
8.5 REVIEW	35
8.6 THE RECORD OF DECISION (ROD).....	37
8.7 FUNDING AND CONTRACTS	39

SECTION 9	MONITORING AND ADAPTIVE MANAGEMENT	42
9.1	MONITORING	42
9.2	ADAPTIVE MANAGEMENT	42
SECTION 10	THE ADMINISTRATIVE RECORD	44
10.1	ENVIRONMENTAL DOCUMENTS	44
10.2	SUPPORTING DOCUMENTS	44
SECTION 11	REVIEWING OTHER AGENCIES NEPA ACTIONS	45
11.1	REVIEWING AND COMMENTING ON EISs	45
11.2	COOPERATING AGENCY	45
11.3	PRE-DECISION REFERRALS TO CEQ	45
11.4	POST-DECISION REFERRALS TO EPA	46

LIST OF FIGURES

Figure 1	Determining the Need for NEPA Documentation	2
Figure 2	The Steps in NEPA Documentation	4
Figure 3	The Steps in Completing a Categorical Exclusion Exception Review	12
Figure 4	Components of the Human Environment	20
Figure 5	The Steps in Completing an Environmental Assessment	24
Figure 6	The Steps in Completing an Environmental Impact Statement	41

APPENDICES

- 1 List of Acronyms**
- 2 Categorical Exclusion Exception Review (CEER) Checklist (Example)**
- 3 FONSI (Example)**
- 4 NOI (Example)**
- 5 DEIS NOA (Example)**
- 6 FEIS NOA (Example)**
- 7 Notice of Correction (Example)**
- 8 Notice of Cancellation (Example)**
- 9 Record of Decision (Example)**
- 10 Scoping Package (Example)**
- 11 Disclosure Statement (Example)**
- 12 National Environmental Policy Act**
- 13 Council on Environmental Quality Regulations (40 CFR Part 1500)**
- 14 Department of Interior Regulations (43 CFR Part 46)**
- 15 Departmental Manual 516 DM 10**
- 16 Indian Affairs Manual 59 IAM 3**
- 17 NEPA 40 Most Asked Questions**
- 18 Environmental Justice Guidance**
- 19 Cumulative Impact Guidance**
- 20 Other Relevant Environmental Laws**
- 21 CEQ Guidance for Appropriate Use of Mitigation and Monitoring**
- 22 CEQ Guidance for Categorical Exclusions**

APPENDIX 17

NEPA’S FORTY MOST ASKED QUESTIONS

Table of Contents

1.	Range of Alternatives	1
2.	Alternatives Outside the Capability of Applicant or Jurisdiction of Agency	1
3.	No-Action Alternative	2
4.	Agency's Preferred Alternative	3
5.	Proposed Action v. Preferred Alternative	3
6.	Environmentally Preferable Alternative	4
7.	Difference Between Sections of EIS on Alternatives and Environmental Consequences	5
8.	Early Application of NEPA	5
9.	Applicant Who Needs Other Permits	6
10.	Limitations on Action During 30-Day Review Period for Final EIS	7
11.	Limitations on Actions by an Applicant During EIS Process	7
12.	Effective Date and Enforceability of the Regulations	8
13.	Use of Scoping Before Notice of Intent to Prepare EIS	9
14.	Rights and Responsibilities of Lead and Cooperating Agencies	9
15.	Commenting Responsibilities of EPA	11
16.	Third Party Contracts	12
17.	Disclosure Statement to Avoid Conflict of Interest	12
18.	Uncertainties About Indirect Effects of A Proposal	13
19.	Mitigation Measures	13
20.	Worst Case Analysis. [Withdrawn.]	14

21.	Combining Environmental and Planning Documents	14
22.	State and Federal Agencies as Joint Lead Agencies	15
23.	Conflicts of Federal Proposal With Land Use Plans, Policies or Controls	15
24.	Environmental Impact Statements on Policies, Plans or Programs	16
25.	Appendices and Incorporation by Reference	17
26.	Index and Keyword Index in EISs	18
27.	List of Preparers	19
28.	Advance or Xerox Copies of EIS	19
29.	Responses to Comments	20
30.	Adoption of EISs	22
31.	Application of Regulations to Independent Regulatory Agencies	23
32.	Supplements to Old EISs	23
33.	Referrals	24
34.	Records of Decision	24
35.	Time Required for the NEPA Process	25
36.	Environmental Assessments (EA)	26
37.	Findings of No Significant Impact (FONSI)	26
38.	Public Availability of EAs v. FONSI	27
39.	Mitigation Measures Imposed in EAs and FONSI	27
40.	Propriety of Issuing EA When Mitigation Reduces Impacts	28
	ENDNOTES	29

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

EXHIBIT C

Santa Ynez Valley Community Plan



County of Santa Barbara
Planning & Development Department
Office of Long Range Planning
Board of Supervisors Adopted
October 6, 2009

BACKSIDE OF COVER

Santa Ynez Valley Community Plan OVERVIEW

The valley

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

The History

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



The Valley Blueprint

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

The Santa Ynez Valley Community Plan

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



BACKSIDE OF OVERVIEW

ACKNOWLEDGMENTS

Santa Barbara County Board of Supervisors

First District:	Salud Carbajal
Second District:	Janet Wolf
Third District:	Doreen Farr
Fourth District:	Joni Gray
Fifth District:	Joseph Centeno

Santa Barbara County Planning Commission

First District:	C. Michael Cooney
Second District:	Cecilia Brown
Third District:	Marell Brooks
Fourth District:	Joe H. Valencia
Fifth District:	Dan Blough

Valley Planning Advisory Committee

Bob Field, Chair

Puck Erickson-Lohnas	Pat Sullivan
Judith Hale	Quinn Spaulding
Carol Herrera	Gerry Shepherd

Office of Long Range Planning

Derek Johnson, Director
Vicki Parker, Deputy Director
Brian A. Tetley, Senior Planner

Planning and Development Staff

Mark Bright, Mapping Division Chief
Brett Buyan, Mapping

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TABLE OF CONTENTS

I. INTRODUCTION

A.	Community Plan Location and Boundaries.....	1
B.	Legal Authority, Purpose and Intent.....	2
C.	Overview of the Santa Ynez Valley Community Plan.....	4
D.	Community Plan Process.....	5
E.	Existing County Plans and Policies.....	8
F.	Meaning of Key Terms Used in this Plan.....	13

II. COMMUNITY DEVELOPMENT

A.	Land Use – General.....	16
B.	Land Use – Townships.....	29
C.	Land Use – Rural, Inner-Rural, and EDRN’s.....	58

III. PUBLIC FACILITIES AND SERVICES

A.	Circulation.....	75
B.	Parks, Recreation and Trails.....	98
C.	Wastewater.....	109
D.	Water.....	124
E.	Fire Protection.....	139
F.	Police Protection.....	147
G.	Resource Recovery and Solid Waste.....	150
H.	Schools.....	154

IV. RESOURCES AND CONSTRAINTS

A.	Biological Resources.....	157
B.	Flooding and Drainage.....	174
C.	Geology, Hillsides, and Topography.....	184
D.	History and Archaeology.....	192
E.	Visual and Aesthetic Resources.....	198

APPENDICES

- A. Mixed Use - Santa Ynez Valley Overlay Ordinance
- B. Trail Siting Guidelines
- C. Example Hydrograph
- D. Vegetation Map
- E. Guidelines for Salmonid Passage at Stream Crossings
- F. Exotic Pest Plants of Greatest Ecological Concern in California
- G. Design Control Overlay Ordinance
- H. Outdoor Lighting Ordinance
- I. References
- J. List of Additional Preparers and Contributors

LIST OF TABLES

1. Valley Blueprint Goals.....	6
2. Buildout Statistics under the Existing Comprehensive Plan.....	17
3. Buildout Statistics under the SYVCP.....	18
4. Santa Ynez Township Zoning and Land Use.....	30
5. Los Olivos Township Zoning and Land Use.....	31
6. Ballard Township Zoning and Land Use.....	31
7. Santa Ynez Valley Agriculture at a Glance.....	58
8. Land Uses in the Inner-Rural Area.....	62
9. Rural/Inner-Rural/Urban Boundary Changes.....	63
10. Existing Developed Rural Neighborhoods.....	64
11. Level of Service Categories.....	78
12. Santa Ynez Valley Roadway Classifications.....	80
13. Definition of Roadway Classifications.....	81
14. Public Parks in the Santa Ynez Valley Planning Area.....	100
15. School Recreational Facilities.....	101
16. Wastewater Treatment Plant Capacity.....	111
17. State Water Allocations in the Santa Ynez Valley.....	124
18. Santa Ynez Uplands Groundwater Basin Groundwater Pumping Fiscal Year 2001-2002.....	127
19. Santa Ynez Uplands Groundwater Basin Hydrologic Budget.....	128
20. Santa Ynez Valley Fire Protection Services.....	139
21. Daily Sheriff Staffing Levels.....	147
22. Components of County Integrated Waste Management Plan.....	151
23. Public School Enrollment	155
24. Geologic Units present in the Santa Ynez Valley.....	185
25. Officially Designated Historic Landmarks and Structures of Merit.....	193

LIST OF FIGURES

1.	Regional Map.....	20
2.	Santa Ynez Township Land Use.....	33
3.	Santa Ynez Township Zoning.....	35
4.	Los Olivos Township Land Use.....	37
5.	Los Olivos Township Zoning.....	39
6.	Ballard Township Land Use.....	41
7.	Ballard Township Zoning.....	43
8.	Productive Cropland Map.....	60
9.	Urban, Rural and EDRN Boundary Lines.....	67
10.	Inner-Rural and Rural Land Use.....	69
11.	Inner-Rural and Rural Zoning.....	71
12a.	Santa Ynez Valley Historical Traffic Volumes.....	76
12b.	Santa Ynez Valley 2008 Traffic Volumes.....	77
13.	Circulation.....	83
14.	Bikeways.....	91
15.	Parks, Recreation and Trails.....	104
16.	Sanitation Districts.....	112
17.	Special Problems Areas.....	116
18.	Water Purveyor Boundaries.....	131
19.	Groundwater Resources.....	133
20.	Public Services.....	141
21.	Flood Hazard Areas.....	178
22.	Slopes.....	188
23.	Historic Resources.....	194
24.	Design Control Overlay.....	202

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

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

E. EXISTING COUNTY PLANS AND POLICIES

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

1. LAND USE ELEMENT

The Land Use Element's four fundamental goals include:

1. Environment

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

2. Urbanization

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

3. Agriculture

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

4. Open Lands

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

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

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

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

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

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

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

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

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

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

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

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

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

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

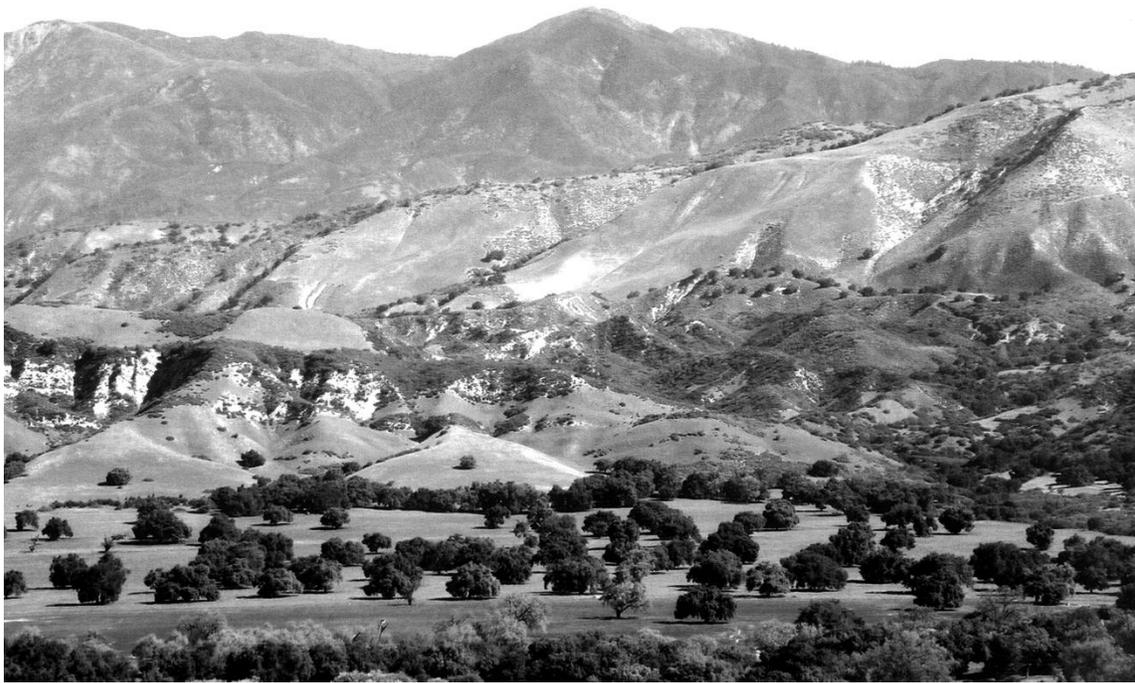
EXHIBIT D



COUNTY OF SANTA BARBARA

Planning and Development

Santa Barbara County Land Use & Development Code



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123 East Anapamu Street
Santa Barbara, CA 93101
805.568.2000

624 West Foster Road, Suite C
Santa Maria, CA 93455
805.934.6250

NOTES:

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

August 2008 Replacement Pages

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

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

SECTION	PAGES
TABLE OF CONTENTS	i through x
ARTICLE 35.2	2-11 through 2-22, 2-29 through 2-44, 2-59 through 2-76, 2-91 through 2-110
ARTICLE 35.3	3-41 through 3-42
ARTICLE 35.4	4-1 through 4-2, 4-25 through 4-62
ARTICLE 35.8	8-3 through 8-4, 8-41 through 8-44
APPENDIX A	A-1 through A-2

August 2009 Replacement Pages

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

Ordinance No. 4714 (Case No. 09ORD-00000-00001, adopted 07/07/2009) Solar Energy Systems.

Ordinance No. 4718 (Case No. 09ORD-00000-00005, adopted 07/07/2009) Noticing Procedures.

Ordinance No. 4722 (Case No. 09ORD-00000-00008, adopted 07/14/2009) Permit Time Extensions.

SECTION	PAGES
TABLE OF CONTENTS	i through x
ARTICLE 35.1	1-9 through 1-10
ARTICLE 35.2	2-1 through 2-170
ARTICLE 35.3	3-1 through 3-24, 3-31 through 3-38, 3-47 through 3-48
ARTICLE 35.4	4-17 through 4-18
ARTICLE 35.8	8-1 through 8-2, 8-61 through 8-62, 8-67 through 8-72
ARTICLE 35.10	10-1 through 10-2, 10-19 through 10-26, 10-35 through 10-46
ARTICLE 35.11	11-47 through 11-54
APPENDIX A	A-1 through A-2

August 2011 Republished Development Code

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

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

December 2011 Republished Development Code

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

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

April 2012 Replacement Pages

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

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

SECTION	PAGES
INSIDE COVER	iii
TABLE OF CONTENTS	i through xii
ARTICLE 35.8	8-1, 8-77 through 8-84
ARTICLE 35.10	10-23 through 10-26
ARTICLE 35.11	11-3 through 11-58
APPENDIX A	A-2

June 2013 Replacement Pages

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

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

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

SECTION	PAGES
INSIDE COVER	iii
TABLE OF CONTENTS	i through xii
ARTICLE 35.3	3-1 through 3-80
ARTICLE 35.4	4-1, 4-35 through 4-76
ARTICLE 35.8	8-4, 8-20, 8-33
ARTICLE 35.11	11-3 through 11-60
APPENDIX A	A-1 through A-2
APPENDIX I	I-1 through I-4

June 2014 Replacement Pages

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

Ordinance No. 4880 (Case No. 11ORD-00000-00032, adopted 04/01/2014) Mission Canyon Community Plan.

Ordinance No. 4882 (Case No. 13ORD-00000-00008, adopted 04/15/2014) 2013 General Package.

Ordinance No. 4886 (Case No. 14ORD-00000-00001, adopted 05/06/2014) Summerland Community Plan Update.

SECTION	PAGES
INSIDE COVER	C-1 - C-4
TABLE OF CONTENTS	TOC-1 - TOC-12
ARTICLE 35.1	1-3 - 1-6, 1-11 - 1-12
ARTICLE 35.2	2-1 - 2-16, 2-29 - 2-30, 2-49 - 2-192
ARTICLE 35.3	3-1 - 3-80
ARTICLE 35.4	4-1 - 4-18, 4-31 - 4-96
ARTICLE 35.5	5-21 - 5-24, 5-35 - 5-76
ARTICLE 35.6	6-3 - 6-16
ARTICLE 35.8	8-1 - 8-4, 8-17 - 8-86
ARTICLE 35.10	10-1 - 10-52
ARTICLE 35.11	11-1 - 11-62
APPENDIX A	A-1 - A-2

October 2014 Replacement Pages

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

Ordinance No. 4894 (Case No. 11ORD-00000-00016, adopted 07/08/2014) Agricultural Processing.

Ordinance No. 4900 (Case No. 10ORD-00000-00001, adopted 10/07/2014) Cuyama Solar Facility.

Ordinance No. 4901 (Case No. 14ORD-00000-00007, adopted 10/07/2014) Summerland Community Plan Update.

SECTION	PAGES
INSIDE COVER	C-1 - C-4
TABLE OF CONTENTS	TOC-5 - TOC-12
ARTICLE 35.2	2-13 - 2-14, 2-189 - 2-192
ARTICLE 35.4	4-1 - 4-2, 4-9 - 4-78
ARTICLE 35.5	5-1 - 5-2, 5-77 - 5-80
ARTICLE 35.11	11-3 - 11-4, 11-53 - 11-62
APPENDIX A	A-1 - A-2

December 2015 Replacement Pages

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

Ordinance No. 4942 (Case No. 11ORD-00000-00015, adopted 10/20/2015) Eastern Goleta Valley Community Plan.

Ordinance No. 4946 (Case No. 15ORD-00000-00012, adopted 11/03/2015) 2015 Housing Element Implementation.

SECTION	PAGES
COVER	C-1 - C-4
TABLE OF CONTENTS	TOC-1 - TOC-12
ARTICLE 35.2	2-1 - 2-2, 2-15 - 2-16, 2-23 - 2-24, 2-33 - 2-44, 2-69 - 2-82, 2-103 - 2-104, 2-111 - 2-194
ARTICLE 35.3	3-1 - 3-2, 3-19 - 3-34, 3-49 - 3-52, 3-61 - 3-84
ARTICLE 35.4	4-1 - 4-4, 4-25 - 4-100
ARTICLE 35.8	8-3 - 8-4, 8-55 - 8-62
ARTICLE 35.10	10-1 - 10-2, 10-19 - 10-26, 10-37 - 10-42
ARTICLE 35.11	11-1 - 11-64
APPENDIX A	A-1 - A-2

12-2015

SANTA BARBARA COUNTY LAND USE & DEVELOPMENT CODE

Table of Contents

Article 35.1 - Development Code Applicability

Chapter 35.10 - Purpose and Applicability of Development Code	1-3
35.10.010 - Purpose of Development Code	1-3
35.10.020 - Authority, Relationship to Comprehensive Plan and Local Coastal Program.....	1-3
35.10.030 - Responsibility for Administration	1-4
35.10.040 - Applicability of the Development Code.....	1-4
35.10.050 - Validity	1-6
Chapter 35.12 - Interpretation of Code Provisions.....	1-7
35.12.010 - Purpose	1-7
35.12.020 - Authority	1-7
35.12.030 - Rules of Interpretation.....	1-7
Chapter 35.14 - Zoning Map	1-9
35.14.010 - Purpose	1-9
35.14.020 - Zoning Map and Zones.....	1-9

Article 35.2 - Zones and Allowable Land Uses

Chapter 35.20 - Development and Land Use Approval Requirements	2-3
35.20.010 - Purpose	2-3
35.20.020 - Prerequisites for Development and New Land Uses	2-3
35.20.030 - Allowable Development and Planning Permit Requirements	2-3
35.20.040 - Exemptions from Planning Permit Requirements	2-5
35.20.050 - Temporary Uses	2-10
Chapter 35.21 - Agricultural Zones.....	2-11
35.21.010 - Purpose	2-11
35.21.020 - Purposes of the Agricultural Zones	2-11
35.21.030 - Agricultural Zones Allowable Land Uses	2-11
35.21.040 - Agricultural Zones Lot Standards	2-17
35.21.050 - Agricultural Zones Development Standards.....	2-18
Chapter 35.22 - Resource Protection Zones.....	2-21
35.22.010 - Purpose	2-21
35.22.020 - Purposes of the Resource Protection Zones	2-21
35.22.030 - Resource Protection Zones Allowable Land Uses	2-22
35.22.040 - Resource Protection Zones Lot Standards.....	2-26
35.22.050 - Resource Protection Zones Development Standards.....	2-27
35.22.060 - Resource Protection Zones Findings for Project Approval	2-27

Chapter 35.23 - Residential Zones	2-29
35.23.010 - Purpose	2-29
35.23.020 - Purposes of the Residential Zones	2-29
35.23.030 - Residential Zones Allowable Land Uses	2-31
35.23.040 - Residential Zones Lot Standards	2-47
35.23.050 - Residential Zones Development Standards	2-48
35.23.060 - DR Zone Standards.....	2-54
35.23.070 - EX-1 Zone Standards	2-55
35.23.080 - MHP Zone Standards	2-55
35.23.090 - MHS Zone Standards	2-56
35.23.100 - PRD Zone Standards	2-58
35.23.110 - SLP Zone Standards	2-60
35.23.120 - SR-M and SR-H Zones Standards	2-60
35.23.130 - MR-O Zone Standards.....	2-62
Chapter 35.24 - Commercial Zones	2-65
35.24.010 - Purpose	2-65
35.24.020 - Purposes of Commercial Zones	2-65
35.24.030 - Commercial Zones Allowable Land Uses	2-66
35.24.040 - Commercial Zones Development Standards	2-85
35.24.050 - CN, C-1, C-2, C-3, C-S, CH, and PI Zones Additional Standards	2-89
35.24.060 - C-V Zone Additional Standards	2-91
35.24.070 - CM-LA Zone Additional Standards	2-91
35.24.070 - SC Zone Additional Standards	2-97
Chapter 35.25 - Industrial Zones	2-99
35.25.010 - Purpose	2-99
35.25.020 - Purposes of Industrial Zones	2-99
35.25.030 - Industrial Zones Allowable Land Uses	2-99
35.25.040 - Industrial Zones Development Standards.....	2-108
35.25.050 - Industrial Zones Additional Standards	2-109
Chapter 35.26 - Special Purpose Zones.....	2-111
35.26.010 - Purpose	2-111
35.26.020 - Purposes of Special Purpose Zones	2-111
35.26.030 - Special Purpose Zones Allowable Land Uses	2-113
35.26.040 - Special Purpose Zones Development Standards	2-126
35.26.050 - MU Zone Additional Standards.....	2-129
35.26.060 - NTS Zone Additional Standards	2-134
35.26.070 - OT Zone Additional Standards.....	2-141
35.26.080 - PU Zone Additional Standards.....	2-142
35.26.090 - REC Zone Additional Standards	2-144
35.26.100 - TC Zone Standards.....	2-144
Chapter 35.28 - Overlay Zones	2-147
35.28.010 - Purpose	2-147
35.28.020 - Applicability of Overlay Zones	2-147
35.28.030 - Affordable Housing (AH) Overlay Zone.....	2-148
35.28.040 - Agriculture - Residential Cluster (ARC) Overlay Zone	2-150
35.28.050 - Reserved	2-152

35.28.060 - Airport Approach (F) Overlay Zone.....	2-152
35.28.070 - Carpinteria Agricultural (CA) Overlay Zone	2-157
35.28.080 - Design Control (D) Overlay Zone	2-166
35.28.090 - Reserved	2-168
35.28.100 - Environmentally Sensitive Habitat Area Overlay Zone	2-168
35.28.110 - Reserved	2-175
35.28.120 - Flood Hazard Area (FA) Overlay Zone.....	2-175
35.28.130 - Growth Management Ordinance (GMO) Overlay Zone	2-176
35.28.140 - Hazardous Waste Management Facility (HWMF) Overlay Zone	2-176
35.28.150 - Highway 101 Corridor (HC) Overlay Zone	2-177
35.28.160 - Pedestrian Area - Old Town Orcutt (PA-OTO) Overlay Zone.....	2-179
35.28.170 - Riparian Corridor - Goleta (RC-GOL) Overlay Zone	2-181
35.28.175 - Scenic Corridor - Mission Canyon (SC-MC) Overlay Zone	2-184
35.28.180 - Single Family Restricted (SF) Overlay Zone	2-184
35.28.190 - Site Design (SD) Overlay Zone.....	2-184
35.28.200 - View Corridor (VC) Overlay Zone	2-186
35.28.210 - Community Plan Overlays	2-186

Article 35.3 - Site Planning and Other Project Standards

Chapter 35.30 - Standards for All Development and Land Uses..... 3-3

35.30.010 - Purpose	3-3
35.30.020 - Applicability.....	3-3
35.30.025 - Agricultural Buffers.....	3-3
35.30.030 - Bikeways	3-9
35.30.040 - Coastal Trails.....	3-9
35.30.050 - Density.....	3-9
35.30.060 - Design Compatibility Standards.....	3-10
35.30.070 - Fences and Walls.....	3-10
35.30.080 - Flood Hazard Development Standards	3-13
35.30.090 - Height Measurement, Exceptions and Limitations.....	3-13
35.30.100 - Infrastructure, Services, Utilities and Related Facilities	3-17
35.30.110 - Lot Line Adjustments	3-18
35.30.120 - Outdoor Lighting.....	3-20
35.30.130 - Performance Standards.....	3-23
35.30.140 - Recreation and Visitor Serving Uses.....	3-24
35.30.150 - Setback Requirements and Exceptions.....	3-24
35.30.160 - Solar Energy Systems.....	3-29
35.30.170 - Solid Waste and Recycling Storage Facilities.....	3-31
35.30.180 - Storm Water Runoff Requirements	3-32
35.30.190 - Subdivisions, Lot Size.....	3-32

Chapter 35.32 - Density Bonus for Affordable Housing..... 3-35

35.32.010 - Purpose and Intent	3-35
35.32.020 - Eligibility for Density Bonus, Incentives or Concessions.....	3-35
35.32.030 - Allowed Density Bonuses	3-35
35.32.040 - Allowed Incentives or Concessions.....	3-35
35.32.050 - Siting Criteria	3-36
35.32.060 - Processing of Density Bonus and Incentive Request	3-36

Chapter 35.34 - Landscaping Standards.....	3-39
35.34.010 - Purpose	3-39
35.34.020 - Applicability	3-39
35.34.030 - Landscape Plans	3-39
35.34.040 - Landscape Agreement and Performance Security	3-39
35.34.050 - Agricultural Zones Landscaping Requirements	3-40
35.34.060 - Residential Zones Landscaping Requirements	3-40
35.34.070 - Commercial Zones Landscaping Requirements	3-42
35.34.080 - Industrial Zones Landscaping Requirements	3-44
35.34.090 - Special Purpose Zones Landscaping Requirements	3-45
35.34.100 - Landscaping Requirements for Parking Areas	3-46
Chapter 35.36 - Parking and Loading Standards	3-49
35.36.010 - Purpose and Intent	3-49
35.36.020 - Applicability	3-49
35.36.030 - Recalculation of Parking Spaces Upon Changes of Use and Additions.....	3-49
35.36.040 - Required Number of Spaces: Agricultural Uses.....	3-49
35.36.050 - Required Number of Spaces: Residential Uses	3-50
35.36.060 - Required Number of Spaces: Nonresidential Uses.....	3-51
35.36.070 - Required Number of Spaces: Industrial Uses	3-52
35.36.080 - Standards for All Zones and Uses	3-52
35.36.090 - Standards for Agricultural Zones and Uses	3-54
35.36.100 - Standards for Residential Zones and Uses	3-55
35.36.110 - Standards for Nonresidential Zones and Uses	3-60
35.36.120 - Standards for Mixed Use Zones and Uses	3-62
Chapter 35.38 - Reasonable Accommodation.....	3-69
35.38.010 - Purpose	3-69
35.38.020 - Applicability	3-69
35.38.030 - Notice of Availability of Accommodation Process	3-69
35.38.040 - Contents of Application.....	3-70
35.38.050 - Processing.....	3-70
35.38.060 - Findings Required for Approval.....	3-71
35.38.070 - Effect of An Approved Reasonable Accommodation on Other Project Applications	3-72
Chapter 35.38 - Sign Standards	3-73
35.38.010 - Purpose	3-73
35.38.020 - Prohibited Signs	3-73
35.38.030 - Exempt Signs, Flags, and Devices	3-73
35.38.040 - Permit Requirements	3-74
35.38.050 - Requirements for All Signs	3-74
35.38.060 - Signs Allowed in All Zones	3-75
35.38.070 - Signs Allowed in Agricultural Zones	3-76
35.38.080 - Signs Allowed in Residential Zones.....	3-77
35.38.090 - Signs Allowed in Commercial and Industrial Zones Outside of Shopping Centers.....	3-77
35.38.100 - Signs Allowed in Shopping Centers.....	3-79
35.38.110 - Signs Allowed in Heavy Commercial and Heavy Industrial Zones Outside of Shopping Centers	3-81
35.38.120 - Nonconforming Signs.....	3-81
35.38.130 - Violation and Enforcement of Sign Regulations.....	3-82
35.38.140 - Special Sign Standards for Summerland	3-82

Article 35.4 - Standards for Specific Land Uses

Chapter 35.42 - Standards for Specific Land Uses..... 4-3

35.42.010 - Purpose and Applicability 4-3

35.42.020 - Accessory Structures and Uses..... 4-4

35.42.030 - Agricultural Employee Dwellings 4-8

35.42.040 - Agricultural Processing Facilities..... 4-10

35.42.050 - Agricultural Product Sales..... 4-11

35.42.060 - Animal Keeping 4-14

35.42.070 - Aquaculture 4-27

35.42.080 - Caretaker or Employee Housing 4-27

35.42.090 - Community Care Facilities..... 4-27

35.42.100 - Composting Facilities..... 4-29

35.42.110 - Conference Centers 4-30

35.42.120 - Crematoriums, Funeral Homes, and Mortuaries..... 4-30

35.42.130 - Drive-through Facilities..... 4-30

35.42.135 - Farmworker Housing..... 4-30

35.42.140 - Greenhouses 4-31

35.42.150 - Guesthouses, Artist Studios, and Cabañas..... 4-36

35.42.160 - Handicraft Industries 4-37

35.42.170 - Hazardous Waste Generators 4-38

35.42.180 - Historical Parks 4-38

35.42.190 - Home Occupations 4-39

35.42.195 - Medical Marijuana Dispenseries 4-43

35.42.200 - Mixed Use Development..... 4-43

35.42.205 - Mobile Homes on Permanent Foundations 4-43

35.42.210 - Residential Agricultural Units..... 4-44

35.42.220 - Residential Project Convenience Facilities 4-46

35.42.230 - Residential Second Units..... 4-47

35.42.240 - Rural Recreation..... 4-54

35.42.250 - Small Animal Hospitals..... 4-55

35.42.260 - Temporary Uses and Trailers 4-55

35.42.270 - Vehicle Services 4-76

35.42.280 - Wineries..... 4-76

Chapter 35.44 - Telecommunications Facilities..... 4-83

35.44.010 - Commercial Telecommunications Facilities 4-83

35.44.020 - Noncommercial Telecommunications Facilities 4-97

Article 35.5 - Oil and Gas, Wind Energy and Cogeneration Facilities

Chapter 35.50 - Purpose and Effect of Article..... 5-3

35.50.010 - Purpose and Intent 5-3

35.50.020 - Applicability..... 5-3

Chapter 35.51 - Oil and Gas Facilities - Coastal Zone..... 5-5

35.51.010 - Purpose 5-5

35.51.020 - Voter Approval Required 5-5

35.51.030 - Definitions..... 5-5

35.51.040 - Allowed Uses and Permit/Plan Requirements..... 5-6

35.51.050 - Onshore Exploratory Oil and Gas Drilling of Onshore Oil and Gas Reservoirs.....	5-8
35.51.060 - Onshore Oil and Gas Production of Onshore Oil and Gas Reservoirs	5-8
35.51.070 - Onshore Processing Facilities Related to Offshore Oil and Gas Development.....	5-10
35.51.080 - Onshore Supply Base, Pier, and Staging Areas Related to Offshore Oil and Gas Development	5-12
35.51.090 - Consolidated Pipeline Terminals.....	5-13
35.51.100 - Oil and Gas Pipelines - Coastal Zone.....	5-15
35.51.110 - Onshore Exploration or Production of Offshore Oil and Gas Reservoirs	5-17
35.51.120 - Marine Terminals - Coastal Zone.....	5-22
Chapter 35.52 - Oil and Gas Facilities - Inland Area.....	5-25
35.52.010 - Purpose	5-25
35.52.020 - Voter Approval - Facilities on South Coast That Support Offshore Oil and Gas Activities	5-25
35.52.030 - Definitions.....	5-25
35.52.040 - Allowed Uses and Permit/Plan Requirements.....	5-25
35.52.050 - Oil Drilling and Production.....	5-27
35.52.060 - Treatment and Processing Facilities.....	5-30
35.52.070 - Refining.....	5-32
35.52.080 - Oil and Gas Pipelines - Inland area	5-33
Chapter 35.53 - Permit Requirements and Plan Applications, Processing, and Review	5-35
35.53.010 - Purpose	5-35
35.53.020 - Applicability.....	5-35
35.53.030 - Filing Requirements for Permit, Development Plan, and Specific Plan Applications	5-36
35.53.040 - Application Filing, Processing, and Review for Oil Drilling and Production Plans (Inland Area) and Exploration Plans and Production Plans (Coastal Zone)	5-39
35.53.050 - Notice of Decision.....	5-40
35.53.060 - Conditions, Restrictions, and Modifications under Approved Plans.....	5-41
35.53.070 - Post-Review Procedures.....	5-41
35.53.080 - Requirements Prior to Commencement of Development Authorized by a Final Development Plan or Oil Drilling and Production Plan.....	5-42
Chapter 35.54 - Findings for Oil and Gas Facilities - Coastal Zone.....	5-43
35.54.010 - Purpose	5-43
35.54.020 - Applicability.....	5-43
35.54.030 - Onshore Exploratory Oil and Gas Drilling of Onshore Oil and Gas Reservoirs - Findings for Exploration Plans.....	5-43
35.54.040 - Onshore Oil and Gas Production of Onshore Oil and Gas Reservoirs - Findings for Production Plans.....	5-44
35.54.050 - Onshore Processing Facilities Necessary or Related to Offshore Oil and Gas Development - Findings for Development Plans	5-44
35.54.060 - Onshore Supply Base, Pier, and Staging Areas Necessary or Related to Offshore Oil and Gas Development - Findings for Development Plans and Specific Plans.....	5-45
35.54.070 - Consolidated Pipeline Terminals (Coastal Zone) - Findings for Development Plans.....	5-45
35.54.080 - Oil and Gas Pipelines (Coastal Zone) - Findings for Development Plans.....	5-46
35.54.090 - Onshore Exploration and/or Production of Offshore Oil and Gas Reservoirs - Findings for Exploration Plans.....	5-46
35.54.100 - Onshore Exploration and/or Production of Offshore Oil and Gas Reservoirs - Findings for Production Plans.....	5-46
35.54.110 - Marine Terminals - Findings for Development Plans	5-47

Chapter 35.55 - Findings for Oil and Gas Facilities - Inland Area.....	5-49
35.55.010 - Purpose	5-49
35.55.020 - Applicability	5-49
35.55.030 - Oil Drilling and Production - Findings for Oil Drilling and Production Plans	5-49
35.55.040 - Treatment and Processing Facilities - Findings for Development Plans	5-49
35.55.050 - Refining - Findings for Development Plans	5-51
35.55.060 - Oil and Gas Pipelines (Inland Area) - Findings for Development Plans.....	5-51
Chapter 35.56 - Oil/Gas Land Uses - Abandonment and Removal Procedures.....	5-53
35.56.010 - Purpose and Intent	5-53
35.56.020 - Applicability	5-53
35.56.030 - Requirement to File an Application	5-54
35.56.040 - Filing an Application to Defer Abandonment	5-54
35.56.050 - Contents of Application to Defer Abandonment	5-54
35.56.060 - Processing of Application to Defer Abandonment.....	5-55
35.56.070 - Decision on Application to Defer Abandonment	5-55
35.56.080 - Deferral Period and Extensions of Approval to Defer Abandonment	5-56
35.56.090 - Filing an Application for a Demolition and Reclamation Permit	5-56
35.56.100 - Content of Application for a Demolition and Reclamation Permit	5-57
35.56.110 - Processing of Demolition and Reclamation Permit.....	5-58
35.56.120 - Findings Required for Approval of a Demolition and Reclamation Permit	5-58
35.56.130 - Performance Standards for Demolition and Reclamation Permits	5-59
35.56.140 - Revocation of Entitlement to Land Use	5-61
35.56.150 - Expiration of a Demolition and Reclamation Permit	5-62
35.56.160 - Post Approval Procedures	5-62
Chapter 35.57 - Wind Energy Conversion Systems	5-63
35.57.010 - Purpose	5-63
35.57.020 - Applicability	5-63
35.57.030 - Allowed Uses and Permit Plan Requirements for Wind Energy Conversion Systems in the Inland Area	5-63
35.57.040 - Application Filing, Processing, and Review	5-64
35.57.050 - Development Standards.....	5-65
35.57.060 - Small Wind Energy Systems	5-67
Chapter 35.58 - Cogeneration Facilities - Inland Area.....	5-75
35.58.010 - Purpose	5-75
35.58.020 - Applicability	5-75
35.58.030 - Allowed Zones and Permit/Plan Requirements.....	5-75
35.58.040 - Development Standards.....	5-75
35.58.050 - Application Filing, Processing, and Review	5-76
35.58.060 - Post-Review Procedures	5-76
Chapter 35.59 - Utility-Scale Solar Photovoltaic Facilities.....	5-77
35.59.010 - Purpose and Intent	5-77
35.59.020 - Applicability	5-77
35.59.030 - Allowed Locations.....	5-77
35.59.040 - Development Standards.....	5-77
35.59.050 - Post-Approval Procedures	5-79

Article 35.6 - Resource Management

Chapter 35.60 - Resource Protection Standards 6-3

35.60.010 - Purpose 6-3

35.60.020 - Applicability 6-3

35.60.030 - Agricultural Lands - Coastal Zone 6-3

35.60.040 - Archaeological Resources - Coastal Zone and Inland Area 6-3

35.60.050 - Beach Development - Coastal Zone 6-4

35.60.060 - Bluff Development - Coastal Zone..... 6-5

35.60.070 - Gaviota Coast Recreational Development - Coastal Zone 6-5

35.60.080 - Shoreline Protection Structures - Coastal Zone..... 6-6

35.60.090 - Tree Removal - Coastal Zone..... 6-6

Chapter 35.62 - Ridgeline and Hillside Development 6-7

35.62.010 - Purpose 6-7

35.62.020 - Applicability 6-7

35.62.030 - Coastal Zone Limitation on Sloping Lot Development..... 6-7

35.62.040 - Ridgeline and Hillside Development Guidelines 6-7

Chapter 35.64 - Transfer of Development Rights 6-9

35.64.010 - Program and Intent, Description and Goals..... 6-9

35.64.020 - Applicability 6-10

35.64.030 - Definitions 6-10

35.64.040 - Program Administrator..... 6-11

35.64.050 - Sending Sites 6-11

35.64.060 - Receiving Sites 6-12

35.64.070 - Reserved 6-15

35.64.080 - Amenity Funds 6-15

35.64.090 - Transfer of Development Rights Authority..... 6-15

35.64.100 - Inter Jurisdictional Agreements..... 6-17

35.64.110 - General Limitations 6-17

Article 35.7 - Site Development Regulations

Chapter 35.76 - Road Naming and Address Numbering 7-3

35.76.010 - Purpose 7-3

35.76.020 - Applicability 7-3

35.76.030 - Areawide Address Numbering System..... 7-3

35.76.040 - Road Name and Status Index 7-4

35.76.050 - Road Names - Procedure, Standards and Signs..... 7-4

35.76.060 - Address Numbers - Procedures, Standards and Display 7-7

35.76.070 - Administration..... 7-10

35.76.080 - Enforcement 7-10

Article 35.8 - Planning Permit Procedures

Chapter 35.80 - Permit Application Filing and Processing 8-3

35.80.010 - Purpose and Intent 8-3

35.80.020 - Authority for Land Use and Zoning Decisions 8-3

35.80.030 - Application Preparation and Filing	8-5
35.80.040 - Application Fees	8-5
35.80.050 - Initial Application Review	8-5
Chapter 35.82 - Permit Review and Decisions.....	8-7
35.82.010 - Purpose and Intent	8-7
35.82.020 - Effective Date of Permits	8-7
35.82.030 - Applications Deemed Approved	8-8
35.82.040 - Permits to Run with the Land	8-8
35.82.050 - Coastal Development Permits	8-8
35.82.060 - Conditional Use Permits and Minor Conditional Use Permits	8-14
35.82.070 - Design Review	8-20
35.82.080 - Development Plans	8-26
35.82.090 - Emergency Permits.....	8-35
35.82.100 - Hardship Determinations.....	8-36
35.82.110 - Land Use Permits	8-36
35.82.120 - Limited Exception Determinations.....	8-38
35.82.130 - Modifications.....	8-39
35.82.140 - Nonconforming Status and Extent of Damage Determinations	8-42
35.82.150 - Overall Sign Plans	8-43
35.82.160 - Reclamation and Surface Mining Permits	8-45
35.82.170 - Sign Certificates of Conformance	8-56
35.82.180 - Sign Modifications	8-56
35.82.190 - Use Determinations	8-57
35.82.200 - Variances	8-60
35.82.210 - Zoning Clearance.....	8-61
Chapter 35.84 - Post Approval Procedures	8-63
35.84.010 - Purpose and Intent	8-63
35.84.020 - Performance Guarantees.....	8-63
35.84.030 - Time Extensions	8-63
35.84.040 - Changes to an Approved Project	8-67
35.84.050 - Reapplications	8-70
35.84.060 - Revocations	8-70
35.84.070 - Post Approval Inspections.....	8-71
Chapter 35.86 - Development Agreements	8-73
35.86.010 - Purpose and Intent	8-73
35.86.020 - Application Requirements	8-73
35.86.030 - Notices and Hearings.....	8-73
35.86.040 - Standards of Review, Findings and Decision.....	8-74
35.86.050 - Development Agreement Amendment or Cancellation.....	8-75
35.86.060 - Recordation	8-75
35.86.070 - Periodic Review.....	8-75
35.86.080 - Modification or Termination	8-75
Chapter 35.88 - Specific Plans.....	8-77
35.88.010 - Purpose and Intent	8-77
35.88.020 - Initiation	8-77
35.88.030 - Contents of Application.....	8-77
35.88.040 - Processing of Specific Plans.....	8-77

35.88.050 - Findings Required for Approval.....	8-78
Chapter 35.89 - Mobilehome Park Closures.....	8-79
35.89.010 - Purpose and Intent	8-79
35.89.020 - Applicability.....	8-79
35.89.030 - Conditional Use Permit Requirement.....	8-79
35.89.040 - Application Contents	8-79
35.89.050 - Special Notice Requirements	8-80
35.89.060 - Informational Meeting.....	8-80
35.89.070 - Conditions of Approval	8-81
35.89.080 - Vacancy of Mobilehome Park of Twenty-five Percent or More	8-83
35.89.090 - Request for Exemption from Relocation Assistance Requirements.....	8-84
35.89.100 - Additional Findings Required for Closure of a Mobilehome Park.....	8-85
Article 35.9 - Reserved	
Article 35.10 - Land Use and Development Code Administration	
Chapter 35.100 - Administrative Responsibility	10-3
35.100.010 - Purpose and Intent	10-3
35.100.020 - Planning Agency Defined.....	10-3
35.100.030 Board.....	10-3
35.100.040 - Commission.....	10-3
35.100.050 - Zoning Administrator	10-4
35.100.060 - Director.....	10-4
35.100.070 - Boards of Architectural Review	10-4
Chapter 35.101 - Nonconforming Uses, Structures, and Lots.....	10-5
35.101.010 - Purpose and Intent	10-5
35.101.020 - Nonconforming Uses of Land and Structures	10-5
35.101.030 - Nonconforming Structures	10-9
35.101.040 - Construction in Progress.....	10-15
35.101.050 - Termination of Nonconforming Uses.....	10-15
35.101.060 - Unpermitted Expansion of Nonconforming Uses	10-16
35.101.070 - Termination Procedures.....	10-16
35.101.080 - Nonconforming Due to Lack of a Discretionary Permit	10-17
Chapter 35.102 - Appeals	10-19
35.102.010 - Purpose and Intent	10-19
35.102.020 - General Appeal Procedures	10-19
35.102.030 - Appeals to the Zoning Administrator	10-22
35.102.040 - Appeals to the Commission.....	10-23
35.102.050 - Appeals to the Board	10-25
35.102.060 - Appeals to the Coastal Commission.....	10-25
Chapter 35.104 - Amendments.....	10-27
35.104.010 - Purpose and Intent	10-27
35.104.020 - Applicability	10-27
35.104.030 - Initiation of Amendments	10-27
35.104.040 - Processing of Amendments	10-28

35.104.050 - Action on Amendments 10-30
 35.104.060 - Findings Required for Approval of Amendments 10-32
 35.104.070 - Effective Dates 10-32
 35.104.080 - Rezoning Requirements for Specific Zones 10-32

Chapter 35.106 - Noticing and Public Hearings 10-37

35.106.010 - Purpose and Intent 10-37
 35.106.020 - Notice of Public Hearing and Review Authority Action 10-37
 35.106.030 - Reserved 10-39
 35.106.040 - Reserved 10-39
 35.106.050 - Land Use Permits 10-39
 35.106.060 - Design Review 10-40
 35.106.070 - Emergency Permits 10-41
 35.106.075 - Time Extensions Under the Jurisdiction of the Director 10-42
 35.106.080 - Contents of Notice 10-43
 35.106.090 - Notice of Pending Exemption from Permits 10-44
 35.106.100 - Failure to Receive Notice 10-45
 35.106.110 - Hearing Procedure 10-45

Chapter 35.108 - Enforcement and Penalties 10-47

35.108.010 - Purpose and Intent 10-47
 35.108.020 - Investigation 10-47
 35.108.030 - Work Stoppage 10-47
 35.108.040 - Referral for Legal Action 10-48
 35.108.050 - Legal Remedies 10-48
 35.108.060 - Cumulative Remedies and Penalties 10-49
 35.108.070 - Recovery of Costs 10-49
 35.108.080 - Processing Fee Penalty Assessment 10-52
 35.108.090 - Penalty for Violations of Conditions 10-52

Article 35.11 - Glossary

Chapter 35.110 - Definitions 11-3

35.110.010 - Purpose 11-3
 35.110.020 - Definitions of Specialized Terms and Phrases 11-3

Appendices

Appendix A - Table of Ordinances Amending this Land Use & Development Code A-1
 Appendix B - Administrative Guidelines for Implementing Measure A96 - Voter Approval Initiative B-1
 Appendix C - County Guidelines on Repair and Maintenance and Utility Connection to Permitted Development C-1
 Appendix D - Development Standards for Residential Second Units on Lots Less Than Two Acres in Size Served by Onsite Sewage Disposal Systems D-1
 Appendix E - Guidelines for Minor Changes to Coastal Development Permits and Land Use Permits E-1
 Appendix F - Guidelines for Telecommunications Sites in Rural and Inner-Rural Areas F-1
 Appendix G - Orcutt Pilot Program G-1
 Appendix H - Substantial Conformity Determination Guidelines H-1
 Appendix I - Agricultural Buffer Implementation Guidelines I-1

Attachments

ATTACHMENT 1 - Community Plan Development Standards

Part 1 - Purpose Statement..... 1
Part 2 - Goleta Community Plan Standards 1
Part 3 - Los Alamos Community Plan Standards 16
Part 4 - Mission Canyon Specific Plan Development Standards 23
Part 5 - Orcutt Community Plan Development Standards 25
Part 6 - Summerland Community Plan Development Standards 78
Part 7 - Toro Canyon Area Plan Development Standards 93

**ATTACHMENT 2 - Permitting Guide for Development of Onshore Oil and Gas Reservoirs Within
State Designated Oilfields - Inland Area**

ARTICLE 35.2

Zones and Allowable Land Uses

Chapter 35.20 - Development and Land Use Approval Requirements	2-3
35.20.010 - Purpose	2-3
35.20.020 - Prerequisites for Development and New Land Uses	2-3
35.20.030 - Allowable Development and Planning Permit Requirements	2-3
35.20.040 - Exemptions from Planning Permit Requirements	2-5
35.20.050 - Temporary Uses	2-10
Chapter 35.21 - Agricultural Zones.....	2-11
35.21.010 - Purpose	2-11
35.21.020 - Purposes of the Agricultural Zones	2-11
35.21.030 - Agricultural Zones Allowable Land Uses	2-11
35.21.040 - Agricultural Zones Lot Standards	2-17
35.21.050 - Agricultural Zones Development Standards.....	2-18
Chapter 35.22 - Resource Protection Zones.....	2-21
35.22.010 - Purpose	2-21
35.22.020 - Purposes of the Resource Protection Zones	2-21
35.22.030 - Resource Protection Zones Allowable Land Uses	2-22
35.22.040 - Resource Protection Zones Lot Standards.....	2-26
35.22.050 - Resource Protection Zones Development Standards.....	2-27
35.22.060 - Resource Protection Zones Findings for Project Approval	2-27
Chapter 35.23 - Residential Zones	2-29
35.23.010 - Purpose	2-29
35.23.020 - Purposes of the Residential Zones.....	2-29
35.23.030 - Residential Zones Allowable Land Uses.....	2-31
35.23.040 - Residential Zones Lot Standards	2-47
35.23.050 - Residential Zones Development Standards	2-48
35.23.060 - DR Zone Standards.....	2-54
35.23.070 - EX-1 Zone Standards	2-55
35.23.080 - MHP Zone Standards	2-55
35.23.090 - MHS Zone Standards	2-56
35.23.100 - PRD Zone Standards	2-58
35.23.110 - SLP Zone Standards	2-60
35.23.120 - SR-M and SR-H Zones Standards.....	2-60
35.23.130 - MR-O Zone Standards.....	2-62
Chapter 35.24 - Commercial Zones	2-65
35.24.010 - Purpose	2-65
35.24.020 - Purposes of Commercial Zones.....	2-65
35.24.030 - Commercial Zones Allowable Land Uses	2-66
35.24.040 - Commercial Zones Development Standards	2-85
35.24.050 - CN, C-1, C-2, C-3, C-S, CH, and PI Zones Additional Standards.....	2-89

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

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

35.21.050 - Agricultural Zones Development Standards

- A. **General development standards.** Development within the Agricultural zones shall be designed, constructed, and established in compliance with the requirements in Table 2-3 (AG-I and AG-II Zones Development Standards) below, and all applicable standards in [Article 35.3](#) through [Article 35.7](#) of this Development Code. These standards apply within the Coastal Zone and Inland area, except where noted.
- B. **Community Plan overlay requirements.** [Section 35.28.210 \(Community Plan Overlays\)](#) establishes additional requirements and standards that apply to development and uses located in an applicable community or area plan as specified in [Section 35.28.210 \(Community Plan Overlays\)](#).

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

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

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

CERTIFICATE OF SERVICE

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

/S/ Nicole Di Camillo

Nicole Di Camillo
ENVIRONMENTAL DEFENSE CENTER

Attorneys for
SANTA YNEZ VALLEY ALLIANCE

Via Email Only

Kevin K. Washburn, Assistant
Secretary, Indian Affairs
f2tappeals@bia.gov

Lewis P. Geysler
Counsel for Lewis P. Geysler and
Robert B. Corlett
lewpg@post.harvard.edu

Nancie G. Marzulla
Counsel for the Santa Ynez Band of
Chumash Mission Indians
nancie@marzulla.com

Sara Drake
Counsel for the State of California,
Department of Justice
sara.drake@doj.ca.gov
linda.thorpe@doj.ca.gov

Rebecca Ross
Counsel for the Pacific Regional
Director, Bureau of Indian Affairs
rebecca.ross@sol.doi.gov

Lawrence J. Conlan
Wendy D. Welkom
Counsel for Anne (Nancy) Crawford-
Hall
lconlan@cappellonoel.com
wwelkom@cappellonoel.com

Amber Holderness
Counsel for the County of Santa
Barbara, California
aholderness@co.santa-barbara.ca.us

1 **Via Email and United States Mail**

2 Brian Kramer
3 Counsel for Brian Kramer and Suzanne Kramer
4 1230 Rosecrans Avenue, Suite 300
5 Manhattan Beach, California 90266
6 briankramerlaw@aol.com

7 James E. Marino
8 Counsel for NO MORE SLOTS
9 1026 Camino del Rio
10 Santa Barbara, CA 93110
11 Jmarinolaw@hotmail.com

12 Thomas F. Gede
13 Ella Foley Gannon
14 Colin C. West
15 Counsel for Santa Ynez Valley Concerned Citizens
16 Morgan, Lewis & Bockius LLP
17 One Market Street, Spear Street Tower
18 San Francisco, CA 94105
19 tom.gede@morganlewis.com
20 ella.gannon@morganlewis.com
21 colin.west@morganlewis.com

22 Kenneth R. Williams
23 Counsel for Preservation of Los Olivos
24 980 9th Street, 16th Floor
25 Sacramento, CA 95814
26 Kenwilliams5165@gmail.com