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UNITED STATES DEPARTMENT OF THE INTERIOR

BRIAN KRAMER AND SUZANNE KRAMER, COUNTY OF SANTA BARBARA, CALIFORNIA, NO MORE SLOTS, LEWIS P. GEYSER AND ROBERT B. CORLETT, PRESERVATION OF LOS OLIVOS, SANTA YNEZ VALLEY CONCERNED CITIZENS, ANNE (NANCY) CRAWFORD-HALL, and SANTA YNEZ VALLEY ALLIANCE, Appellants v. PACIFIC REGIONAL DIRECTOR, BUREAU OF INDIAN AFFAIRS, Appellee.	**APPELLANT COUNTY OF SANTA BARBARA'S SUPPLEMENTAL REPLY BRIEF IN SUPPORT OF APPEAL OF DECEMBER 24, 2014 NOTICE OF DECISION ON THE SANTA YNEZ BAND OF CHUMASH INDIANS CAMP 4 FEE-TO-TRUST APPLICATION AND OCTOBER 17, 2014 FINDING OF NO SIGNFICANT IMPACT BY PACIFIC REGIONAL DIRECTOR**

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I. INTRODUCTION.

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

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

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[1] The County labels exhibits in this brief starting with the next letter following its prior exhibits.

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

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

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

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

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II. ARGUMENT.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

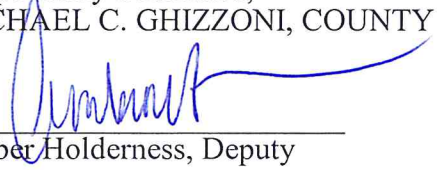
The Tribe and Regional Director have argued that the Tribe is not proposing any business uses as part of the trust acquisition, narrowly defining the phrase "business uses" and, therefore, the Regional Director did not have to address the economic benefits criterion. The record, however, shows that the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

III. CONCLUSION.

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

Dated: March 11, 2016

Respectfully Submitted,
MICHAEL C. GHIZZONI, COUNTY COUNSEL



Amber Holderness, Deputy

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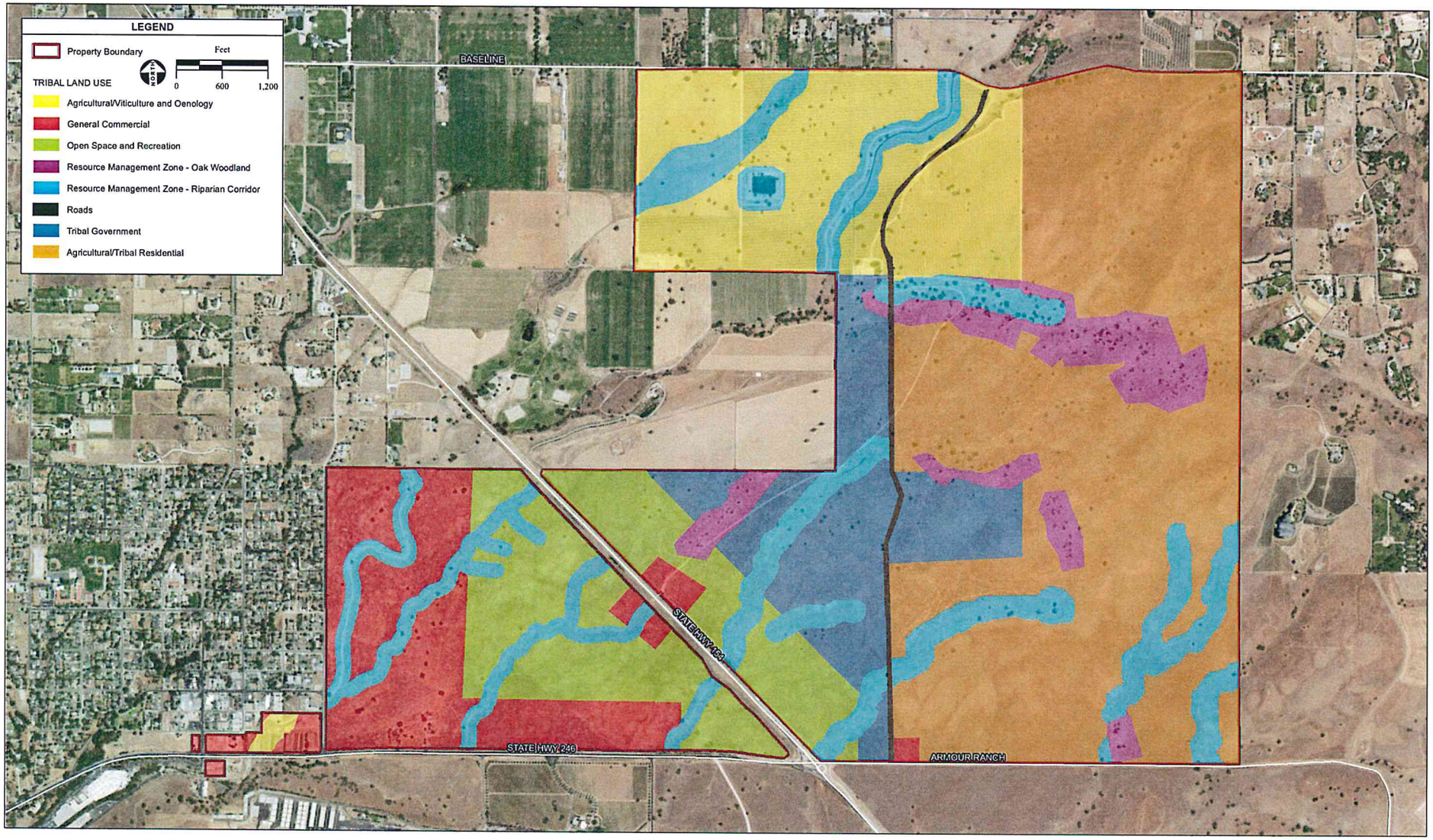
EXHIBIT I

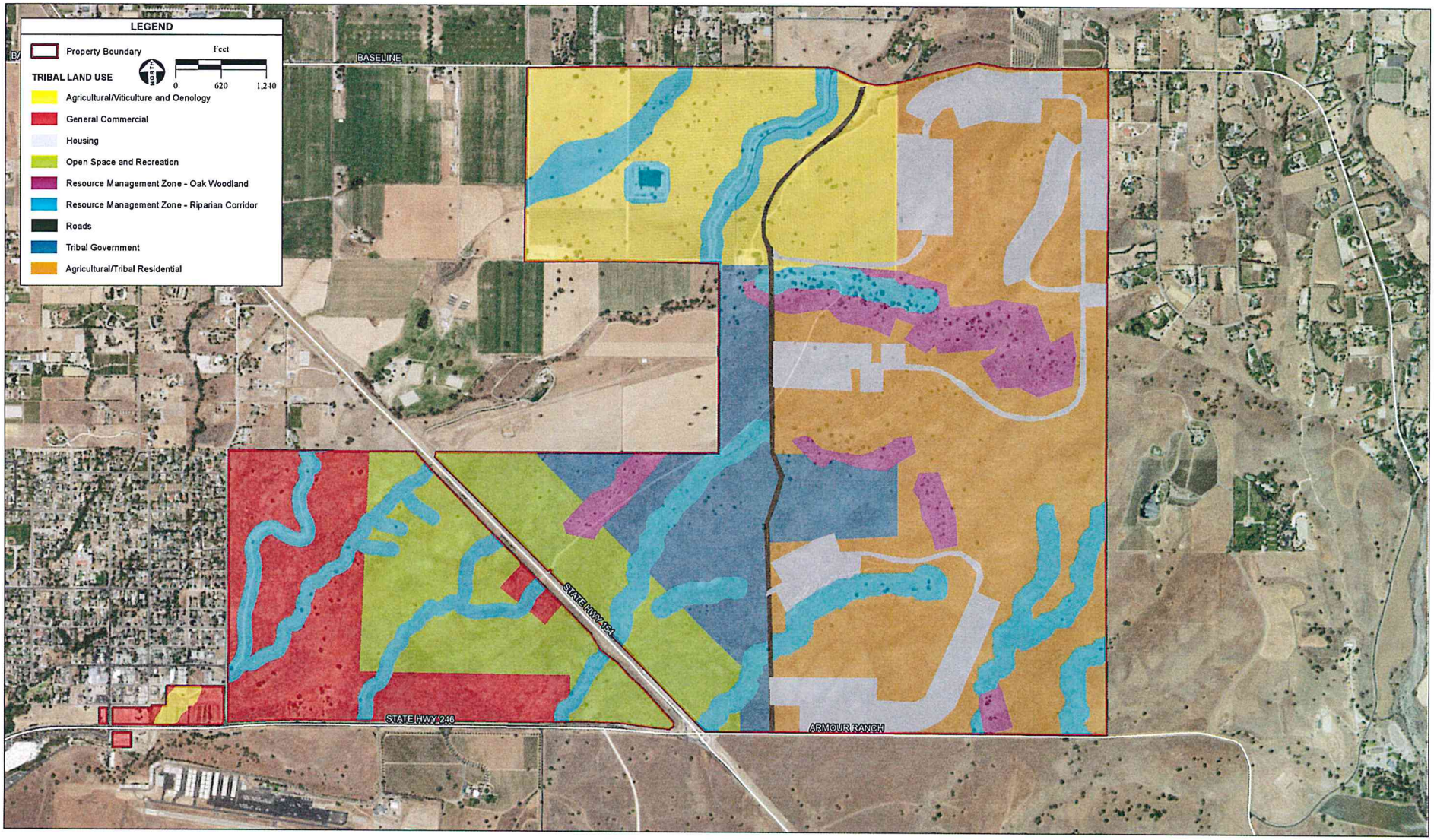
ATTACHMENT 2A



SOURCE: Aerial Photograph, 1/5/2015; AES, 2/24/2016

Proposed Tribal Land Use

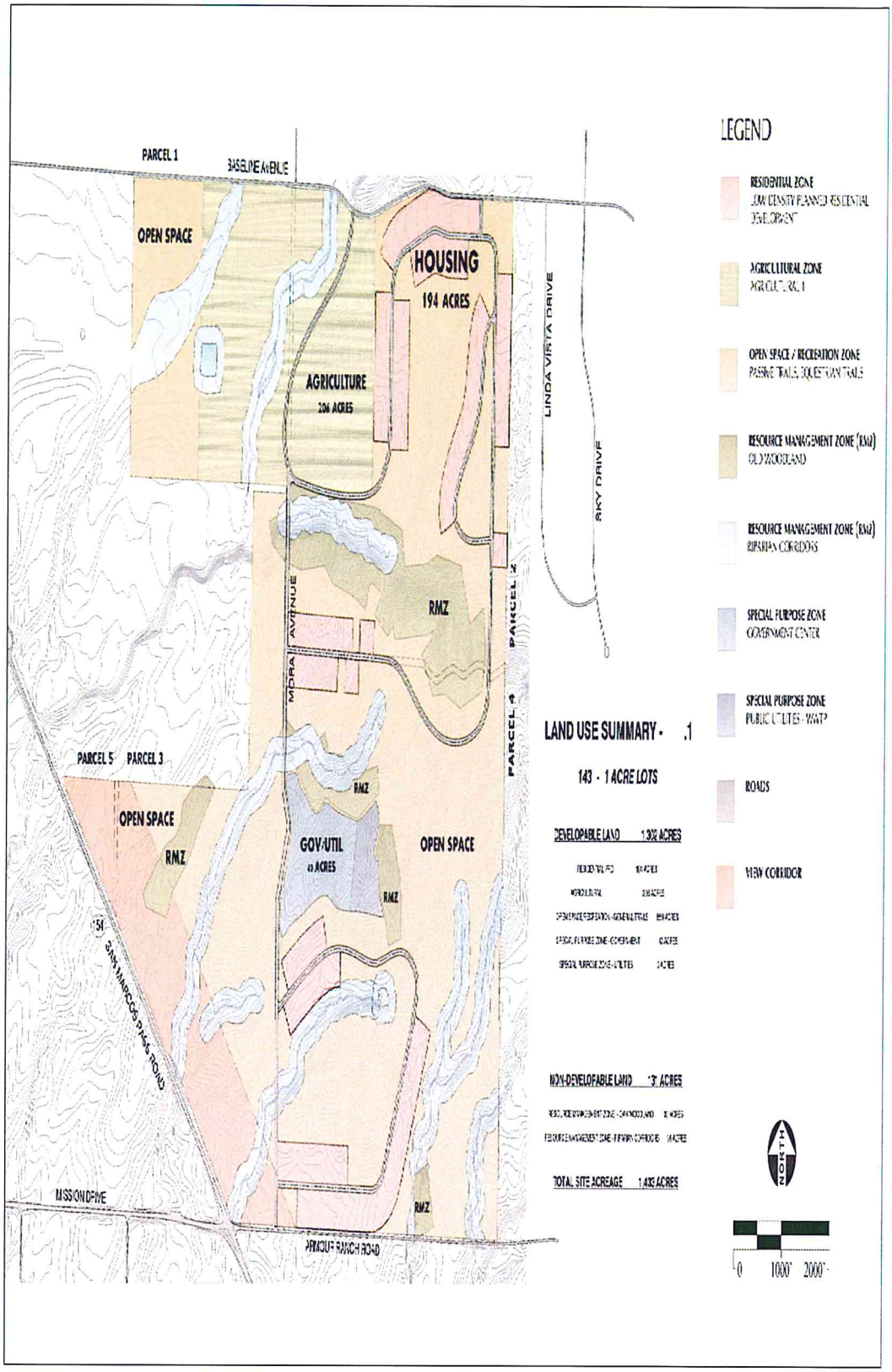
EXHIBIT J



SOURCE: Aerial Photograph, 1/5/2015; AES, 3/8/2016

Proposed Tribal Land Use

EXHIBIT K



SOURCE: Summit Project Management, 2014; AES, 2014

Santa Ynez Comp 4 EA / 201551

Figure 2-2
Alternative B Site Plan

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I, Natalie M. Warwick, declare that I am over the age of eighteen and not a party to this cause. I am employed in, or a resident of the County of Santa Barbara, where the mailing occurs. My business address is 105 E. Anapamu Street, Suite 201, Santa Barbara, CA 93101. I further declare that on the 11th day of March, 2016, I delivered a true copy of the **APPELLANT COUNTY OF SANTA BARBARA'S SUPPLEMENTAL REPLY BRIEF**

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

SEE ATTACHED DISTRIBUTION LIST

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

Executed this 11th day of March, 2016.

Natalie M. Warwick

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