



# City of Santa Barbara

Community Development Department

[SantaBarbaraCA.gov](http://SantaBarbaraCA.gov)

July 8, 2026

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## Rental Housing

### Mediation Program

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93102-1990

Ben Eilenberg, THE MISSION LLC  
[socalindustrialequities@gmail.com](mailto:socalindustrialequities@gmail.com)

**Re: 505 E. Los Olivos Street  
HAA Notice Regarding Alleged Project Disapproval**

Dear Mr. Eilenberg:

On April 10, 2026, you provided the City with a written notice via email ("**HAA Notice**") asserting that you believe the City has "disapproved" the proposed housing development project at 505 E. Los Olivos Street ("**Project**") under the Housing Accountability Act ("**HAA**") and requesting that the City follow the administrative procedures established by Government Code Section 65589.5(h)(6)(E).

Specifically, on April 8, 2026, the City provided you with written notice of its updated findings regarding the Project's consistency with objective standards and policies that were adopted and in effect as of January 29, 2024, the date the complete preliminary application for the project was submitted ("**Consistency Letter**"). The Consistency Letter updated the City's findings previously transmitted to you on August 29, 2025 in response to your March 9, 2026, application for a lot line adjustment ("**LLA Application**").

The Consistency Letter informed you of the City's determination that the Project, inclusive of the LLA Application, would be inconsistent with multiple adopted objective standards and policies, each of which were identified in the Consistency Letter. Among other issues, the Consistency Letter identified the following inconsistencies with Titles 27 (Subdivisions) and 30 (Zoning – Inland) of the Santa Barbara Municipal Code ("**SBMC**"):

- The LLA Application would be inconsistent with the SBMC because resultant Parcel 1 would not conform to the General Plan and Zoning Ordinance in contradiction of SBMC § 27.40.040 and resultant Parcel 2 would fall entirely within the Mission Creek development limitation area per SBMC § 30.140.050, meaning that Parcel 2 could not be developed with at least one building in contradiction of SBMC § 27.40.040 and SBMC § 27.02.010 ("Lot" defined as containing "at least one building site that complies with the requirements of the Zoning Ordinance and the General Plan");
- The Project would be inconsistent with SBMC § 30.20.020 because it proposes 270 units on resultant Parcel 1 where only single-unit and limited two-unit residential uses are allowed;
- The Project would be inconsistent with SBMC § 30.20.020.A because it proposes 270 units where only 1 unit is allowed; and
- The Project would be inconsistent with City Charter Section 1506 and with the development standards of SBMC Table 30.20.030.A because it proposes a maximum height of 112 feet where a maximum of 30 feet would be allowed.

The HAA Notice alleges that the four findings above would not support denial of the LLA Application or the Project as a whole because the Project has invoked the Builder's Remedy provisions of the Housing Accountability Act. The HAA Notice requests the City "reconsider its findings with respect to the lot line adjustment in light of the Builder's Remedy protections afforded to this project" and concludes that "the City's current position is such that it constitutes a denial of the project." Therefore, the HAA Notice asked the City to institute the administrative review procedures set forth in Government Code Section 65589.5(h)(6)(E).

The City complied with your request to follow the procedures established within Government Code section 65589.5(h)(6)(E) as follows:

- Within five working days of receiving your April 10, 2026, HAA Notice, the City posted the notice on the City's internet website, provided a copy of the notice to any person who has made a written request for notices, and filed the notice with the county clerk. (See Gov. Code § 65589.5(h)(6)(E)(ii).)
- After posting the notice, the City received 161 public comments raising various concerns about the Project. The City has considered all objections, comments, evidence, and concerns about the Project and the HAA Notice. (See Gov. Code § 65589.5(h)(6)(E)(iii).) Copies of the public comments are provided for your reference via a download link, which City staff will provide under separate cover.
- This letter serves as the required written findings pursuant to Government Code section 65589.5(h)(6)(E)(iv), issued not less than 60 days but within 90 days of your HAA Notice.

As an initial matter, it is not clear that the HAA Notice you provided complies with Government Code section 65589.5(h)(6)(E)(i), which requires an applicant to "provide written notice detailing the challenged conduct and why it constitutes disapproval." The HAA Notice includes assertions that four of the issues identified in the Consistency Letter should not apply to the Project because the Project has invoked the Builder's Remedy. However, the Consistency Letter identified 53 potential inconsistencies between the Project and adopted, objective development standards. The HAA Notice does not identify – let alone detail – how the Consistency Letter's identification of four specific issues would "cause unnecessary delay or needless increases in the cost of the proposed housing development project."

Regardless of any deficiencies with the HAA Notice, the City complied with your request to follow the administrative procedures established under Government Code section 65589.5(h)(6)(E), as set forth above. In addition, the City now makes the following findings:

1. **The City's Challenged Course of Conduct is Necessary.** The City finds that its course of conduct does not constitute a disapproval of the Project and that the challenged course of conduct is necessary.

The sole basis of the alleged Project disapproval identified in the HAA Notice is the fact that the City provided the Consistency Letter, and the Consistency Letter identified discrepancies between the LLA Application and the City's Subdivision Ordinance (SBMC Title 27) and between the Project and the City's use, density, and height standards.

Note that the Consistency Letter was issued by City staff to comply with the requirements of Government Code section 65589.5(j)(2)(A)(ii) by providing the applicant with written documentation identifying the provision or provisions of adopted, objective standards that it considers to be inconsistent with the Project, and an explanation of the reason or reasons it considers the housing development to be inconsistent, not in compliance, or not in conformity with such standards. The Consistency Letter does not constitute final action on the Project, impose conditions on the Project, or commit the City's decision-making bodies to any particular course of action. However, it was necessary for the City to provide the Consistency Letter, or the Project would have been deemed consistent with the City's objective standards, regardless of any inconsistencies in fact. (Gov. Code §65589.5(j)(2)(B).)

The City recognizes that it is your position that the Project should not be subject to the identified standards because of the Builder's Remedy. However, the Consistency Letter does not commit the City to applying or enforcing those standards – it simply preserves the City's option to apply such standards in the future when the decision-makers take up the Project. Even if the four standards identified in the Consistency Letter were precluded by the Builder's Remedy today, preliminary applications can expire, and laws change over time, which means that until the City takes action on the Project, it does not know which standards will be applicable to the Project. Therefore, it remains necessary for the City to provide you with written notice of the inconsistency to preserve those issues for the decision-making body.

Moreover, note that the Project does not meet the definition of a "builder's remedy project" under the latest version of the HAA. (Gov. Code § 65589.5(h)(11).) Government Code section 65589.5(h)(11)(C)(i) defines the maximum density for a builder's remedy project as the greater of: (I) Fifty percent greater than the minimum density deemed appropriate to accommodate housing for that jurisdiction as specified in subparagraph (B) of paragraph (3) of subdivision (c) of Section 65583.2 [*here, this would equal a density of 30 du/ac, which is 1.5 x the default density of 20 du/ac*]; (II) three times the density allowed by the general plan, zoning ordinance, or state law, whichever is greater [*here, this would equal 9 du/ac, which is 3 x the General Plan density of 3 du/ac*]; and (III) the density that is consistent with the density specified in the housing element [*not applicable here, as the site is not included in the housing element*]. Therefore, the Project would be allowed a maximum density of 30 du/ac to meet the "builder's remedy" definition in Government Code section 65589.5(h)(11).

The Project proposes a density of 71.43 du/ac, far in excess of the density allowed under the HAA's definition of a builder's remedy project.<sup>1</sup> Accordingly, the City's transmittal of the Consistency Letter does not constitute a Project disapproval under Government Code section 65589.5(h)(6)(E).

2. **The City's Challenged Course of Conduct is Reasonable.** The City finds that its challenged course of conduct is reasonable because the City has a duty under the Housing Accountability Act to provide applicants for housing development projects with notice of potential inconsistencies between objective City standards and proposed projects. The Consistency Letter fulfills the City's statutory obligation to provide such notice, without constituting a final determination or otherwise committing the City's ultimate decision-makers to a particular decision with respect to the Project.

Because the City is simply complying with the Housing Accountability Act's review process and notice requirements, the City's challenged course of conduct is reasonable.

3. **Instructions for Next Steps.** In order for the City to make a final determination regarding the Project, CEQA review will need to be completed. The City informed you in writing on July 31, 2025, that the Project did not qualify for a CEQA exemption and that a full CEQA process would be required. The City's July 31, 2025 letter is included as Attachment A to this letter and incorporated herein by this reference.

To help with this process, the City anticipates working with a CEQA consultant to prepare the following technical studies: Air Quality and Greenhouse Gas Emissions Technical Report; Biological Assessment; Geologic Hazard Assessment; Phase I Environmental Site Assessment; updated Phase 1 Archaeological Report; Utilities and Infrastructure Capacity Analysis; Traffic Operations/ Emergency Access and Evacuation Study; Construction Health Risk Assessment; Energy Analysis; Historic Resource Report; Paleontological Resources Assessment; and Noise and Vibration Study.

To facilitate the City's review of the Project, you may wish to prepare, and submit for peer review, the following technical studies: Biological Assessment; Geologic Hazard Assessment; Phase I Environmental Site Assessment; updated Phase 1 Archaeological Report; Utilities and Infrastructure Capacity Analysis; Historic Resource Report; Paleontological Resources Assessment; and Noise and Vibration Study. If you do not choose to prepare said technical studies and submit them to the City for peer review, the City will work with a CEQA consultant to prepare them. You are also welcome to resubmit your application in response to all or some of the City's Consistency Letter findings, though this is not required for the City to complete the CEQA process or to schedule hearings regarding the Project.

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<sup>1</sup> Although the Project is not a "builder's remedy" project as defined by Government Code section 65589.5(h)(11), the City acknowledges that the Project was deemed complete before January 1, 2025, and is therefore subject to the provisions of Government Code section 65589.5 that were in place on the date the preliminary application was submitted. (Gov. Code § 65589.5(f)(7).)

Following completion of the CEQA process, the City will schedule hearings to take action on the Project as a whole, inclusive of the LLA Application. Note that until this occurs, neither the Project as a whole nor the LLA Application can be approved. Under the Permit Streamlining Act, the time to act on a project does not begin until after a lead agency has complied with CEQA. (Gov. Code § 65950.) If a project involves an approval that contains elements of both discretionary and ministerial actions, the project will be deemed to be discretionary and thus subject to CEQA. (14 Cal Code Regs §15268(d); *Protecting Our Water & Env't'l Resources v County of Stanislaus* (2020) 10 Cal.5th 479, 497.) Here, the City has not completed its CEQA review of the Project. The Project includes the LLA Application, so even if an LLA Application on its own were a ministerial approval, none of the time limits to act on the Project under the Permit Streamlining Act have been triggered. In addition, CEQA prohibits dividing a single large project into a series of smaller projects, resulting in “piecemeal” environmental review that fails to consider the impacts of the whole undertaking. (See *East Sacramento Partnership for a Livable City v City of Sacramento* (2016) 5 Cal.App.5th 281, 293.) Therefore, the City may not take final action to approve the LLA Application until CEQA review for the entire Project is complete.<sup>2</sup>

In sum, the City has not “disapproved” the Project by causing an unreasonable delay. The City provided the Consistency Letter within the timeframe required by the Housing Accountability Act, and the City is prepared to continue processing the Project, including the LLA Application, so that the decision-making bodies can take a final action to approve or disapprove the Project in a timely manner upon the completion of the CEQA review process.

If you have any questions or further information that may influence this determination, we encourage you to contact the City for further discussion.

Sincerely,



Allison DeBusk

Community Development Director

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<sup>2</sup> During the public comment period, on June 9, 2026, your attorney contacted outside counsel for the City to assert that the LLA Application should be “deemed approved” due to the passage of time following submittal of the LLA Application. For the reasons explained above, this position is not correct, and the LLA Application has not yet been approved or disapproved.



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July 31, 2025

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Ben Eilenberg, THE MISSION LLC  
socalindustrialequities@gmail.com

**Re: 505 E. Los Olivos Street (PLN2024-00299)  
Qualification for AB 130 CEQA Exemption**

Dear Mr. Eilenberg:

On July 3, 2025, you emailed to inquire whether your development application may be eligible for the new California Environmental Quality Act ("CEQA") exemption enacted under Assembly Bill ("AB") 130 (2025).

As discussed in more detail below, after review, City staff has determined that the project at 505 E. Los Olivos Street (APN 025-150-009) (the "Project") does not appear to qualify for AB 130.

### **I. The Project Is Not Consistent With the City's General Plan and Zoning.**

A project must be consistent with the applicable general plan and zoning ordinance to qualify for the AB 130 exemption. (Pub. Res. Code § 21080.66(a)(4).) The Project is not consistent with the City's General Plan and Zoning.

The Project application has invoked the builder's remedy as it existed prior to December 31, 2024, which means that a qualifying project cannot be denied based on inconsistencies with a City's zoning ordinance and general plan land use designation. (Gov. Code § 65589.5(d)(5).) However, under this version of the builder's remedy (i.e., before the enactment of AB 1893, which took effect on January 1, 2025), the California Department of Housing and Community Development ("HCD") opined that a builder's remedy project was not considered consistent with general plan or zoning designations for the purposes of evaluating eligibility for a CEQA exemption.<sup>1</sup> In other words, a city's limited ability to deny a project based on general plan and zoning inconsistencies does not mean that a project is consistent with a city's general plan and zoning regulations for other purposes. HCD has further opined that the HAA amendments enacted by AB 1893 (2024) allow projects that meet AB 1893's definition of a "builder's remedy project" to be deemed consistent with applicable development standards and therefore eligible for CEQA exemptions requiring general plan and zoning consistency.

Here, the Project has not invoked AB 1893, and thus appears to be proceeding under the HAA as it existed prior to AB 1893's enactment. We also note that the Project exceeds the density limitations of a defined "builder's remedy project" under AB 1893, so the Project as currently

<sup>1</sup> See HCD Letter of Technical Assistance to City of San Jose (Feb 7, 2025), available at <https://www.hcd.ca.gov/sites/default/files/docs/planning-and-community/HAU/sanjose-hau-1359-ta-ab1893-02062025.pdf>.

proposed is unable to use the newer version of the law or be deemed consistent with the City's general plan and zoning standards.<sup>2</sup>

Accordingly, because the Project is not proceeding under AB 1893, the Project is not consistent with the City's General Plan and Zoning "for all purposes" and thus does not meet the requirements of Public Resources Code section 21080.66, subdivision (a)(4)(A).

## **II. The Project Does Not Satisfy Pub. Res. Code § 21080.66(a)(6)**

AB 130 requires that projects satisfy a number of environmental criteria, which AB 130 incorporates by reference. (Pub. Resources Code § 21080.66(a)(6); Gov. Code § 65913.4(a)(6).) The project does not meet several of these criteria.

First, a project may not be located on a site containing wetlands. (Gov. Code § 65913.4(a)(6)(C).) U.S. Fish & Wildlife Service maps a portion of the Project site as Freshwater Forested/Shrub Wetland (see Attachment 1 - National Wetlands Inventory map). The City's Master Environmental Assessment also includes the Project site as containing both a creek and wetland habitat.

Second, a project may not be located on a site that contains habitat for protected species identified as candidate, sensitive, or species of special status, fully protected species, or species protected by the federal Endangered Species Act. (Gov. Code § 65913.4(a)(6)(J).) NOAA Fisheries maps the Project site as critical habitat for Steelhead (see Attachment 2 - ESA Critical Habitat map). As noted above, the City's Master Environmental Assessment also identifies the Project site as containing wetland habitat, which supports sensitive species.

Third, the Project is located within a regulatory floodway as determined by the Federal Emergency Management Agency ("FEMA") (see Attachment 3 - FEMA FIRMet map).<sup>3</sup> To our knowledge, the development has not received a no-rise certification in accordance with Section 60.3(d)(3) of Title 44 of the Code of Federal Regulations. Unless a no-rise certification has been acquired, this would disqualify the Project from AB 130.

Fourth, the Project site is located within a special flood hazard area subject to inundation by the 1 percent annual chance flood (100-year flood) as determined by FEMA (see Attachment 4 -

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<sup>2</sup> Under AB 1893, a builder's remedy project must have a density such that the number of units, as calculated before the application of a density bonus, complies with certain conditions. First, the density cannot exceed the greatest of the following: (1) fifty percent greater than the "default" or "Mullin" density on the site; (2) three times the density allowed by the general plan, zoning ordinance, or state law, whichever is greater; or (3) the density that is consistent with the density specified in the housing element. (Gov. Code § 65589.5(h)(11)(C)(i).) Second, if any portion of the site is located within one-half mile of a major transit stop, a very low vehicle travel area, or a high or highest resource census tract, the greatest allowable density shall be 35 units per acre more than the amount allowable under the first condition. (Gov. Code § 65589.5(h)(11)(C)(ii).) The Project exceeds all of these applicable density limits.

<sup>3</sup> See

<https://msc.fema.gov/portal/search?AddressQuery=505%20e%20los%20olivos%20street%2C%20santa%20barbara%2C%20ca>

FEMA map).<sup>4</sup> Thus, in order to proceed, the Project would need to either: (1) be subject to a Letter of Map Revision prepared by FEMA and issued to the local jurisdiction; or (2) meet FEMA requirements necessary to meet minimum flood plain management criteria of the National Flood Insurance Program (C.F.R., tit. 44, ch. I, pts. 59 & 60).

Accordingly, the environmental site criteria identified above disqualify the Project from using the AB 130 exemption.

### **III. SB 131 Does Not Apply**

Under Senate Bill (“SB”) 131 (2025), housing projects that nearly qualify for a CEQA exemption but fall short due to a single unmet condition are eligible for a streamlined review process whereby these projects are subject only to review of the specific environmental effect that disqualifies them, not a full CEQA checklist. (See Pub. Resources Code § 21080.1.) Because the Project does not qualify for AB 130 by several unmet conditions, it will not be eligible for SB 131’s streamlined review.

### **IV. Conclusion**

In sum, the Project does not qualify for the new AB 130 statutory exemption from CEQA. Due to the Project’s anticipated environmental effects, it will be subject to a full CEQA process. If you have any questions or further information that may influence this determination, we encourage you to contact us for further discussion.

Sincerely,



Allison DeBusk  
Interim Community Development Director

#### **Attachments:**

1. National Wetlands Inventory map
2. ESA Critical Habitat map
3. FEMA FIRMette map
4. FEMA map – zoomed in version

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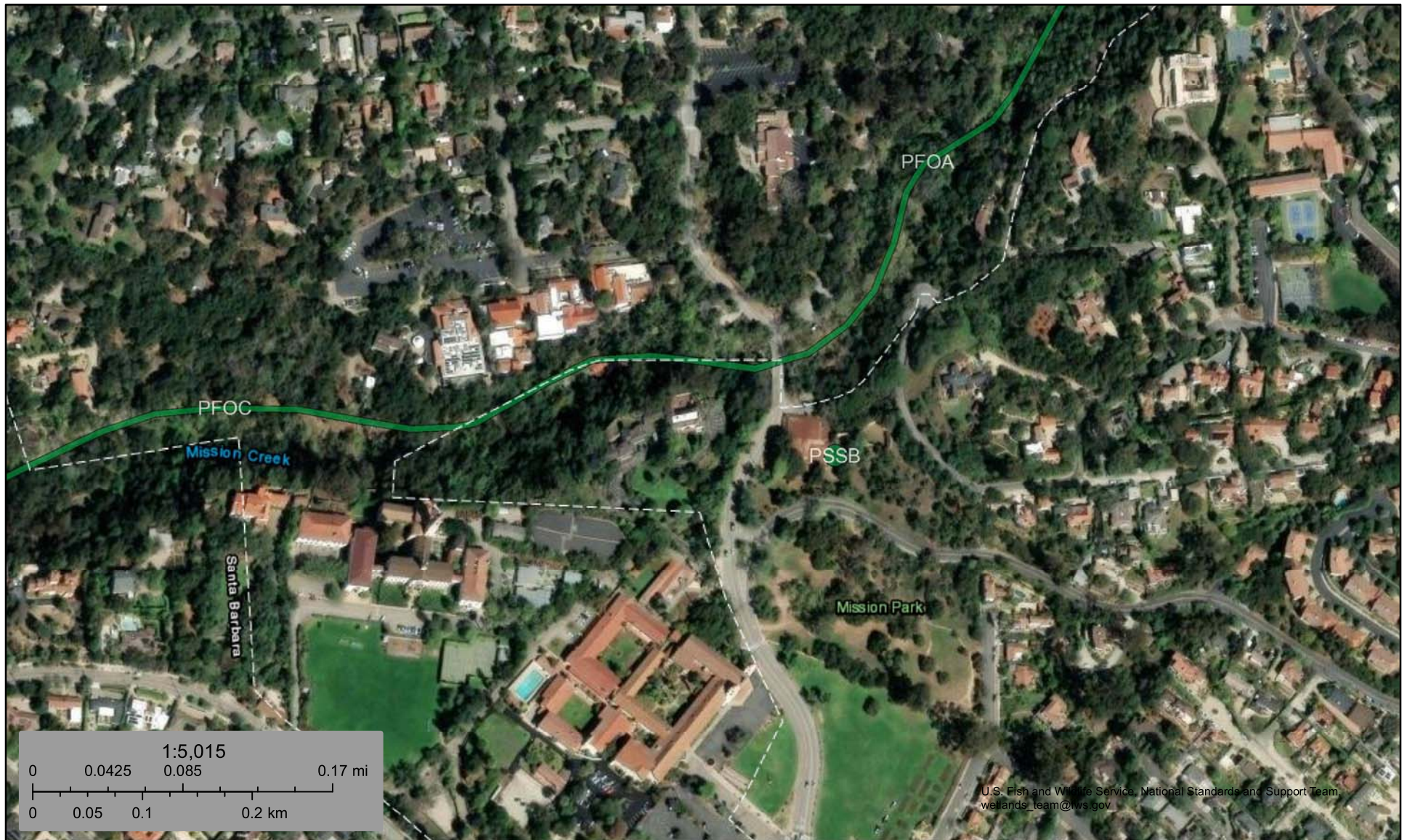
<sup>4</sup> *Ibid.*



U.S. Fish and Wildlife Service

# National Wetlands Inventory

505 E Los Olivos - USFWS National Wetlands



July 10, 2025

## Wetlands

|                                                                                     |                                |                                                                                     |                                   |                                                                                       |          |
|-------------------------------------------------------------------------------------|--------------------------------|-------------------------------------------------------------------------------------|-----------------------------------|---------------------------------------------------------------------------------------|----------|
|  | Estuarine and Marine Deepwater |  | Freshwater Emergent Wetland       |  | Lake     |
|  | Estuarine and Marine Wetland   |  | Freshwater Forested/Shrub Wetland |  | Other    |
|                                                                                     |                                |  | Freshwater Pond                   |  | Riverine |

This map is for general reference only. The US Fish and Wildlife Service is not responsible for the accuracy or currentness of the base data shown on this map. All wetlands related data should be used in accordance with the layer metadata found on the Wetlands Mapper web site.

Attachment 1

## ESA Critical Habitat (WCR)



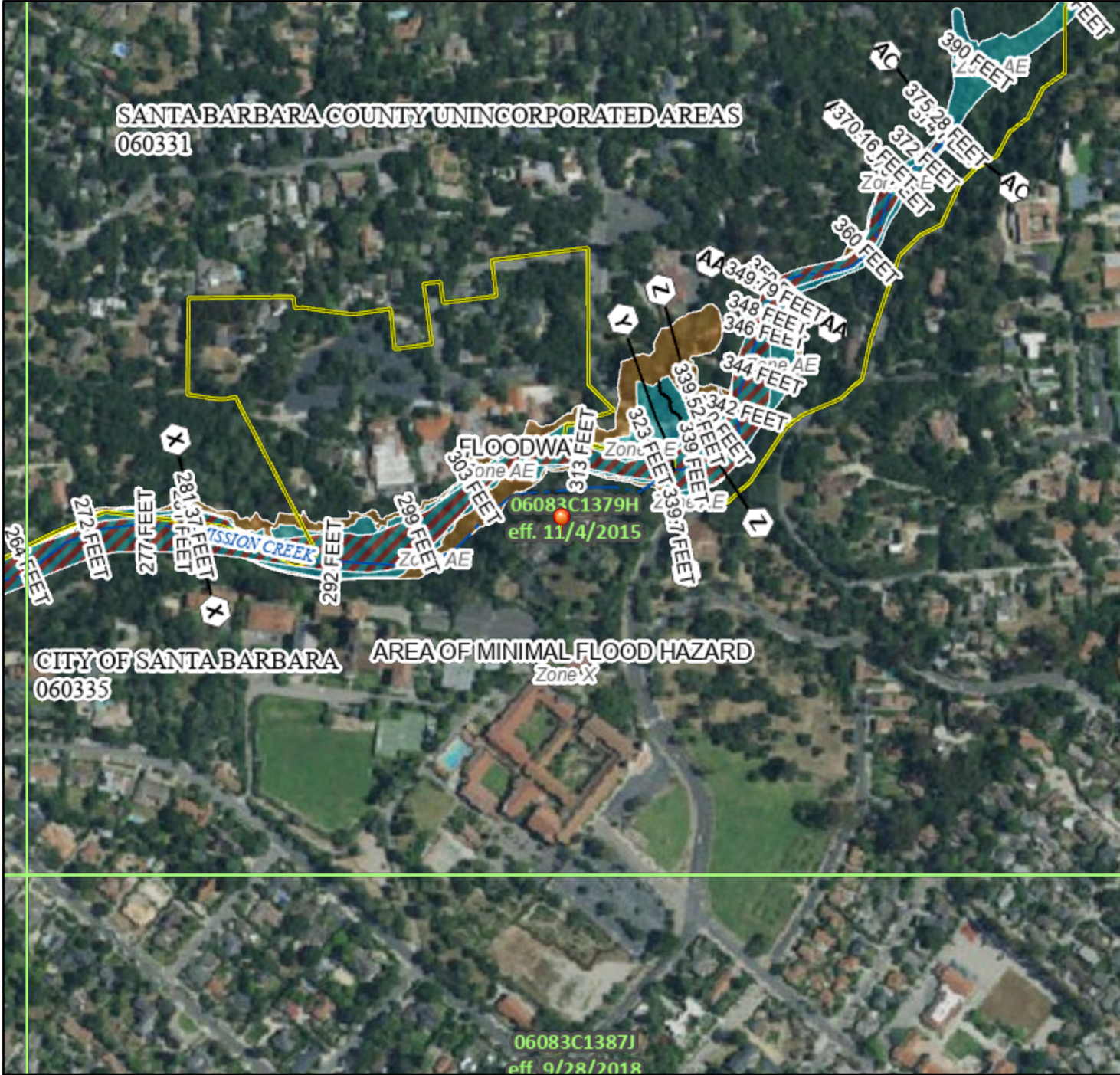
NMFS West Coast Region Endangered Species Act critical habitat service.

NOAA National Marine Fisheries Service, West Coast Region | Esri Community Maps Contributors, California State Parks, © OpenStreetMap, Microsoft, Esri, TomTom, Garmin, SafeGraph, GeoTechnologies, Inc, METI/NASA, USGS, Bureau of Land Management, EPA, NPS, US Census Bureau, USDA, USFWS

# National Flood Hazard Layer FIRMette



119°43'8"W 34°26'39"N



## Legend

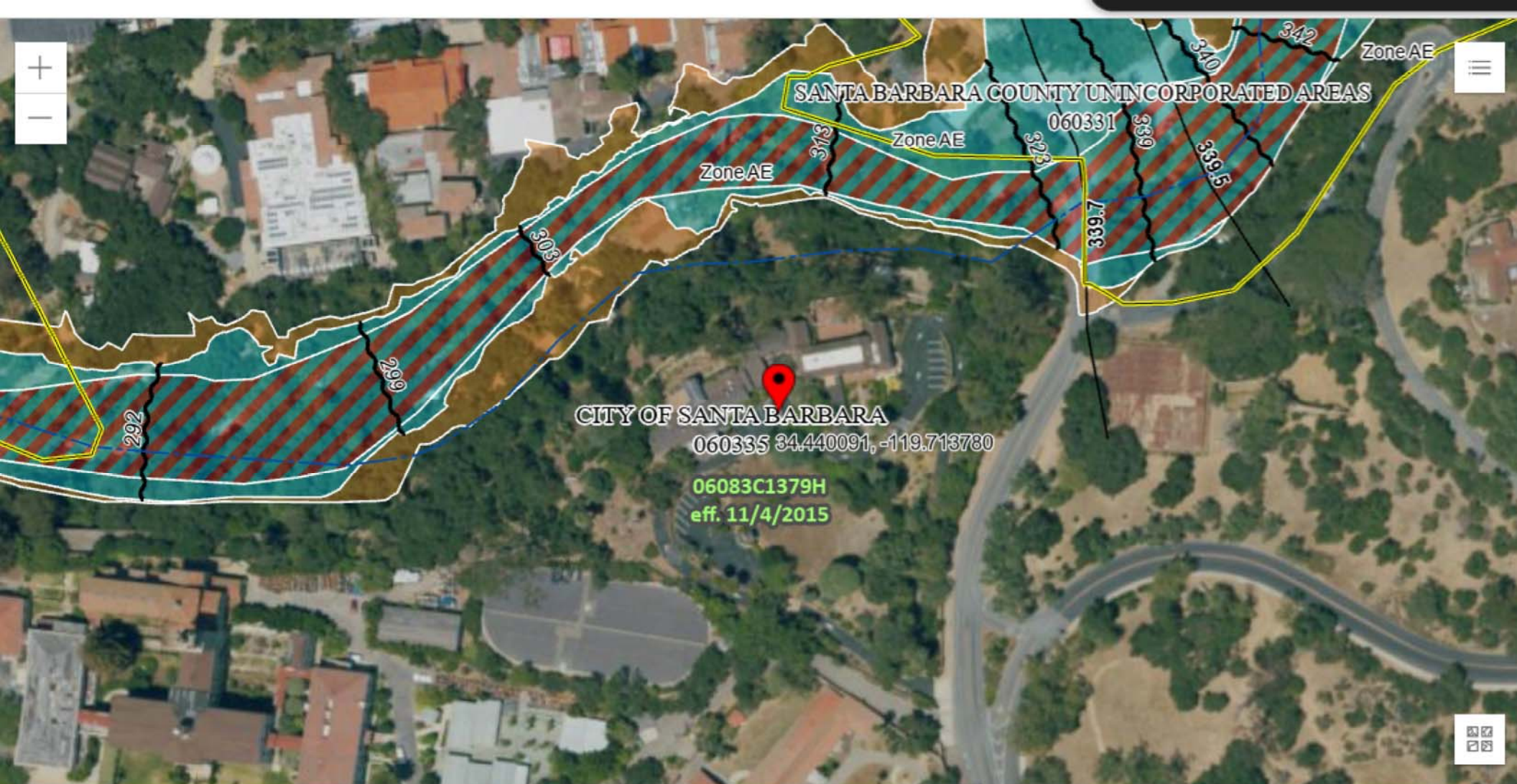
SEE FIS REPORT FOR DETAILED LEGEND AND INDEX MAP FOR FIRM PANEL LAYOUT

|                             |  |                                                                                                                                                                   |
|-----------------------------|--|-------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| SPECIAL FLOOD HAZARD AREAS  |  | Without Base Flood Elevation (BFE)<br>Zone A, V, A99                                                                                                              |
|                             |  | With BFE or Depth Zone AE, AO, AH, VE, AR                                                                                                                         |
|                             |  | Regulatory Floodway                                                                                                                                               |
| OTHER AREAS OF FLOOD HAZARD |  | 0.2% Annual Chance Flood Hazard, Areas of 1% annual chance flood with average depth less than one foot or with drainage areas of less than one square mile Zone X |
|                             |  | Future Conditions 1% Annual Chance Flood Hazard Zone X                                                                                                            |
|                             |  | Area with Reduced Flood Risk due to Levee. See Notes. Zone X                                                                                                      |
|                             |  | Area with Flood Risk due to Levee Zone D                                                                                                                          |
| OTHER AREAS                 |  | NO SCREEN Area of Minimal Flood Hazard Zone X                                                                                                                     |
|                             |  | Effective LOMRs                                                                                                                                                   |
| GENERAL STRUCTURES          |  | Area of Undetermined Flood Hazard Zone D                                                                                                                          |
|                             |  | Channel, Culvert, or Storm Sewer                                                                                                                                  |
| OTHER FEATURES              |  | Levee, Dike, or Floodwall                                                                                                                                         |
|                             |  | Cross Sections with 1% Annual Chance Water Surface Elevation                                                                                                      |
| MAP PANELS                  |  | Digital Data Available                                                                                                                                            |
|                             |  | No Digital Data Available                                                                                                                                         |
| MAP PANELS                  |  | Unmapped                                                                                                                                                          |
|                             |  | The pin displayed on the map is an approximate point selected by the user and does not represent an authoritative property location.                              |

This map complies with FEMA's standards for the use of digital flood maps if it is not void as described below. The basemap shown complies with FEMA's basemap accuracy standards

The flood hazard information is derived directly from the authoritative NFHL web services provided by FEMA. This map was exported on 7/30/2025 at 9:17 PM and does not reflect changes or amendments subsequent to this date and time. The NFHL and effective information may change or become superseded by new data over time.

This map image is void if the one or more of the following map elements do not appear: basemap imagery, flood zone labels, legend, scale bar, map creation date, community identifiers, FIRM panel number, and FIRM effective date. Map images for unmapped and unmodernized areas cannot be used for regulatory purposes.



USGS, USDA, The National Map: Orthoimagery. January 09, 2025.

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