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**James E. Marino
Attorney at Law
1026 Camino del Rio
Santa Barbara, CA 93110
Tel/Fax. (805) 967-5141
Email: jmarinolaw@hotmail.com**

COUNTY ADMINISTRATOR

ROUTE TO:

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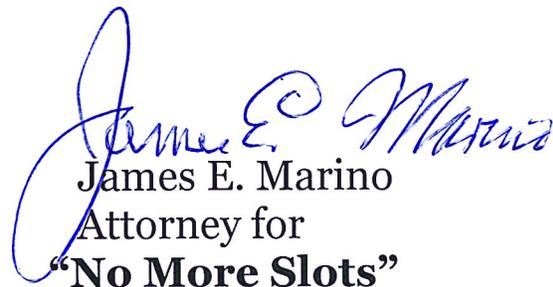
RETURN INSTRUCTIONS:

9 February 2016

County of Santa Barbara
Board of Supervisors
Ad Hoc Advisory Committee
On intergovernmental agreements
With the Santa Ynez Band of Mission Indians

ATTACHED ARE THE COMMENTS AND CLARIFICATIONS
SUBMITTED BY "NO MORE SLOTS" TO THE AD HOC
COMMITTEE AND FOR THE BENEFIT O THE PUBLIC AT
LARGE, REGARDING THE ONGOING DISCUSSIONS ABOUT
THE TERMS OF ANY AGREEMENT TO BE NEGOTIATED
WITH THE SANTA YNEZ BAND OF MISSION INDIANS.
THESE DISCUSSIONS ARE TO DETERMINE WHAT FEES ARE
APPROPRIATE FOR THE BAND TO PAY IN LIEU OF TAXES
FOR ANY LAND FOUND TO BE LEGALLY TRANSFEREABLE
INTO FEDERAL INDIAN TRUST STATUS IN THE FUTURE AND
WHAT MITIGATION MEASURES ARE NEEDED TO COMPLY
WITH 25 CFR 151.10, 25 CFR 151.111, AND NEPA and CEQA

Very Truly Yours;


James E. Marino
Attorney for
"No More Slots"

To the County of Santa Barbara and the Ad Hoc subcommittee assigned to make recommendations to the County Board of Supervisors concerning any agreement that might be reached regarding fees to be paid to the County in lieu of taxes for any land transfer into trust for the purposes of providing additional housing for tribal members of the Santa Ynez Band of Mission Indians at Santa Ynez, California and other issues that might be resolved by any legally permissible intergovernmental agreement.

Dear Subcommittee members;

The County Board of Supervisors assigned supervisors Farr and Adams to an Ad Hoc subcommittee to make recommendation to the Board of Supervisor concerning the terms that the County would require in any agreement with the tribal government in lieu of the payment of taxes in connection with the transfer of any land into trust for additional housing to be constructed for the current 136 tribal members of the Santa Ynez band of Mission Indians at Santa Ynez California.

Previously the tribal Chairman had falsely advised the subcommittee of the U.S. House Natural resources Committee that the County of Santa Barbara refused to meet and confer with the tribal government to even discuss any potential transfer of land into trust. Previously County Executive Officer Chandra Waller wrote to the Committee and informed them that those representations were not true and that the only thing the County of Santa Barbara required as prerequisite to any such meetings and discussions was that a legally binding and enforceable agreement could be reached on any and all issues.

A copy of that letter is attached hereto as EXHIBIT "A". As a result of the belief in the representation of chairman Armenta, that the County refused to even meet and confer with the tribal government, a few of the subcommittee members expressed the view that if the County would not at least meet and confer with the tribal government then the committee might move the La Malfa Bill, HR 1157 out of the subcommittee for more consideration by the full house committee.

At no time did the subcommittee direct the county to reach an agreement to transfer land into trust or dictate any terms of any agreement that might be reached regarding any proposed transfers of land into trust. The direction was to meet and confer and was based upon the false representations of the tribal chairman that the County had refused to even meet and confer with them on any issues.

Since that hearing the County, through the established ***Ad Hoc*** committee, has been meeting regularly with the tribal government to discuss issues with respect to any proposed fee to trust transfer proposed and the payment of fees in lieu of taxes.

The Santa Ynez Band has been proceeding with attempts to transfer land into trust using the administrative procedure provided for under the Indian Reorganization Act, 25 United States Code section 465, *et. seq.* **(IRA)** Those proposed transfers have been opposed on a number of legal grounds, not the least of which is they lack the required legal criteria established by the rules promulgated under 25 **USC** 465 specifically those set out in 25 *Code of Federal Regulations* 151.10 and in particular those required by 25 CFR 151.11. ***These legal issues must be resolved before any land may be transferred into trust and they***

cannot be waived or ignored nor eliminated by the terms of any agreement.

Also, the legal right to transfer any land into trust by the Santa Ynez Band of Mission Indians has been challenged on the legal basis that the Santa Ynez Band of Mission Indians was not a tribe recognized and acknowledged by the United States on or before 18 June 1934 and therefore is not entitled to bring any and into trust under the authority of the Indian Reorganization Act, **(IRA)** as established by the United States in the controlling 2009 Supreme Court case of ***Carciari v Salazar*** 555 U.S. 379.

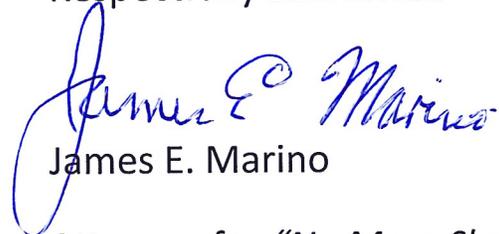
In addition these administrative transfers have been challenged on other legal grounds, which are now pending, including the inadequacy of environmental assessment to support any claim that the environmental impacts of fee to trust transfer are not significant **(FONSI)** and for failure to comply with the *United States Environmental Policy Act (NEPA)* and the *California Environmental Quality Act (CEQA)*

As a result of these pending legal challenges the County cannot agree to support any transfer of lands into trust until these legal determinations have been concluded. Nothing however prevents the County, the public and the tribal government, acting through the County ***Ad Hoc*** committee and the public forums being held, from continuing to discuss and reach any potential agreement on other issues, for example, how the Santa Ynez Band of Mission Indians can and will compensate the County now and in the future for all the public services and infrastructure the tribe, it's businesses, customers and tribal members use regularly without paying the costs, which are normally paid for by the assessment of certain County and state taxes.

With respect to the current “term sheets” and the matrix created about the exchange of proposals, no reference to transferring specific properties into trust or any agreement by the County to do so should be included until these important legal questions can be resolved in the only applicable forum, a court of law. These legal issues are not matters that can be resolved by the terms of any agreement between the parties and to do so might constitute an illegal agreement, *void ab initio*.

Moreover, as set out above, the parties are now meeting and conferring openly to discuss those issues that might be resolved by the terms of any mutual agreement or understanding reached. This process satisfies the concerns of the subcommittee of the U.S. House Natural Resources Committee, who had been misled to believe the County had been refusing to even meet and confer with the tribal government of the Santa Ynez Band of Mission Indians in the past because of the prior testimony and representations of Tribal Chairman Armenta and also because of the inferences of Santa Barbara County Supervisor Steve Lavagnino who alluded to the County failing to meet its obligations in his testimony before that same subcommittee in June 2015.

Respectfully Submitted

A handwritten signature in blue ink that reads "James E. Marino". The signature is fluid and cursive, with a large initial "J" and "M".

James E. Marino

Attorney for “No More Slots”

EXHIBIT

“A”

LETTER FROM FORMER COUNTY CEO
CHANDRA WALLAR TO U.S. HOUSE OF
REPRESENTATIVES NATURAL RESOURCES
COMMITTEE REGARDING DISCUSSIONS
WITH THE SANTA YNEZ BAND OF INDIANS

County of Santa Barbara, California Comments of Hearing:

Request for Inclusion in Official Record

United States House of Representatives Committee on Natural Resources Subcommittee of
Indian and Alaska Native Affairs

August 2, 2012 Oversight Hearing on Indian Lands: Exploring Resolution to Disputes
Concerning Indian Tribes, State and Local Governments, Private Land Owners over Land Use
and Development

Submitted By: Chandra L. Wallar, County Executive Officer, Santa Barbara County

Chairman Young and Ranking Member Lujan, on behalf of the County of Santa Barbara, I want
to thank you for the opportunity to submit written testimony for the Subcommittee's oversight
hearing regarding

The County of Santa Barbara Board of Supervisors has adopted a legislative policy which
formally supports government-to-government relations and recognizes the role and unique
interests of tribes, states, counties, and other local governments to protect all members of their
communities and to provide governmental services and infrastructure beneficial to all. In
addition, the County recognizes and respects the tribal right of self-governance, to provide for
tribal members and to preserve traditional tribal culture and heritage. In similar fashion, the
County recognizes and promotes its own self-governance to provide for the health, safety, and
general welfare of all members of our communities. The County supports the full involvement
of local jurisdictions and all community members on issues and activities which may generate
public health, safety or the environmental impacts.

Involvement of the local government, general public and technical consultants in matters
pertaining to future land use and potential development is critical to the overall review of any
project. This broad involvement provides thoughtful compliance with Community Plans and the
County's General Plan. Failure to fully engage a diverse group of stakeholders in project
development, and review, impairs the ability of a local government to seek appropriate
mitigation and/or provide critical public services in an orderly fashion which may have long
term deleterious impacts on a region as a whole.

The County of Santa Barbara continuously works with the California State Association of
Counties (CSAC) as well as the National Association of Counties (NACo) to collectively improve
upon processes to develop and continue government-to-government relationships between
federal, tribal, state, and local governments. It should be recognized that the County of Santa

Barbara's position on the need for stakeholder and local government involvement is by no means unique. Both CSAC and NACo adopted policies consistent with that of the County of Santa Barbara in public engagement and stakeholder involvement as well as the following areas:

- Projects that impact off reservation land require review and approvals by the local jurisdiction to construct improvements consistent with state law and local ordinances including the California Environmental Quality Act.
- Tribal government mitigation of all off reservation impacts caused by projects for services including but not limited to traffic, law enforcement, fire, parks and recreation, roads, flood control, transit and other public infrastructure
- Projects will be subject to a local jurisdiction's health and safety laws and guidelines including but not limited to water, sewer, fire inspection, fire protection, ambulance service, food inspection, and law enforcement.

The County has continuously supported the CSAC and NACo policy positions stating that judicially enforceable agreements between counties and tribal governments be required to ensure that potential impacts resulting from projects are fully analyzed and mitigated to the satisfaction of the surrounding local governments in the long term. Such agreements ensure that tribal and local governments can fulfill their primary mandate; ensuring the health and safety of those we serve. Without such agreements, and the ability to fully mitigate local impacts of a tribal government's business and development activities, local government's ability to in fact ensure the health and safety of residents is severely compromised.

In addition it is important to note that, as a result of the severe economic issues facing the State of California, a critical mechanism providing local government with funding to mitigate the impacts of tribal development and business activities, the State Special Distribution Fund (SDF), has diminished by over 50%. This places both the health and safety of all in jeopardy. Santa Barbara County has lost over \$760,000 used annually to sustain fire and law enforcements services as well as maintenance of transportation infrastructure to mitigate the impacts of tribal businesses including gaming. County policy is that private and public projects must mitigate the impacts of their development on public infrastructure and services. Mitigation is achieved through conditioning of the project to complete infrastructure improvements and/or payment of impact fees.

During the hearing, your committee respectfully posed multiple questions to the testifying witnesses to gain a thorough understanding of the Santa Barbara County land use process and the ability of the Santa Ynez Band of the Chumash Indians to access the land use process.

Additional questions were proffered on the nature and disposition of the cooperative agreement mentioned by the Tribe. I would like to provide you with the County's perspective on these key issue areas.

Land Use

Regarding the land use issues and the 6.9 acre parcel recently taken into trust by the Bureau of Indian Affairs (BIA) on behalf of the Tribe, the County of Santa Barbara did not appeal the BIA's decision. The County Board of Supervisors considered this item in open session on July 10, 2012, receiving testimony from 46 individuals both for and against an appeal, and voted not to appeal.

The 6.9 acres includes a 2.13 acre western portion of the property which is zoned for recreational uses. The remaining 6 parcels totaling 4.77 acres are zoned C-2/MU allowing commercial and commercial/residential mixed uses under the local Santa Ynez Community Plan. Therefore, a museum/cultural center and retail commercial uses are allowed in the C-2/MU zone district with approval of a Development Plan by the local Planning Commission. The steps in the process for all County residents begin with submittal of a complete application. After staff review of project scope and determination of environmental impacts and consistency with Community and County General Plan the project moves to the County Planning Commission for a public hearing and decision on approval of the project, including appropriate conditions for mitigating impacts. The Planning Commission's action can be appealed to the Board of Supervisors within 10 days of their action. If appealed, a public hearing would be scheduled at the Board of Supervisors. The County of Santa Barbara Planning Development has not received a project application for a project in question on the 6.9 acres owned by the Santa Ynez Band of the Chumash Indians.

The 1,400 acres that the Tribe desires to take into trust and referenced during the Subcommittee hearing is currently zoned AG-II-100 (Agriculture, with a minimum parcel size of 100 acres). This land is also in a multi-year Agricultural Preserve contract which limits the uses on the property to agricultural uses. Agricultural preserve contracts require the application and renewal of the property owner over a ten or twenty year period in exchange for reduced property taxes.

Under current zoning, the property can be developed with agricultural uses, including grazing and cultivated agriculture, without any planning permits. There are a number of conditionally permitted uses on agriculturally zoned land, including country clubs, golf courses, and schools. A permit for these land uses would be processed as described above for Development Plans.

In order to change the land use from agriculture to another use, such as the development of housing on the 500 acres, referenced in the Subcommittee hearing, the owner of the property

would request that the County initiate a General Plan Amendment. The Planning Commission would consider an application and determine whether or not it should be processed. The Commission would consider factors such as public benefit of the proposed use, consistency with County Plans and policies, and compliance with the site's agricultural preserve contract. The Commission's recommendation is forwarded to the Board of Supervisors for the final decision. It is important to note that, as of this date, the County has not received a project submission for the 1,400 acres in question.

This process allows local government to review potential impacts of a development which may need to be thoroughly analyzed and mitigated. The impacts may include sheriff and fire services, traffic and circulation as well as the continued viability of agriculture on a given property or surrounding properties. Ensuring that impacts are addressed in a manner which preserves the health and safety of any community, as well as the present and future quality of life, is at the foundation of local government.

The Cooperative Agreement

The County Executive Office received a draft cooperative agreement from the Santa Ynez Band of the Chumash Indians on June 1, 2011. For your reference, the draft agreement is attached to this correspondence. During the Subcommittee hearing, it was stated that this agreement was delivered to the County "over 370 days ago with no response." Given the parameters of the federal fee to trust process, it is premature to initiate an agreement prior to submittal of a formal application from the Santa Ynez Band of the Chumash Indians. This was stated to the tribal representative following receipt of the agreement. Furthermore, it is my belief, this proposal is lacking specific details on development plans for the 1,400 acres and the resulting impacts upon which both parties could thoughtfully consider or discuss appropriate mitigation.

As noted above, the County of Santa Barbara supports government-to-government relations and recognizes the role and unique interests of tribes, states, counties, and other local governments to protect all members of their communities and to provide governmental services and infrastructure beneficial to all. In addition, the County recognizes and respects the tribal right of self-governance to provide for tribal members and to preserve traditional tribal culture and heritage. In similar fashion, the County recognizes and promotes self-governance by counties to provide for the health, safety, and general welfare of all members of our communities. As a local government we welcome the opportunity to work collaboratively with the Tribe and engage those potentially impacted by future development in order to facilitate sound land use decisions that benefit all. Any process that does not provide for involvement of all stakeholders, including that of the representative local government does not provide sound long term land use decisions nor transparency in government decision-making.

Thank you again for the opportunity to submit written testimony for the Subcommittee's oversight hearing regarding

Attachments

- Draft Cooperative Agreement
- County of Santa Barbara adopted Legislative Platform