

COUNTY OF SANTA BARBARA'S
AUTHORITY FOR REVISIONS TO
SECTION 13.4 OF 2015
TRIBAL-STATE COMPACT

March 3, 2016

Public meeting between County of Santa Barbara Ad Hoc
Subcommittee and Santa Ynez Band of Chumash Indians

AUTHORITY FOR COUNTY'S REVISIONS TO SECTION 13.4 OF TRIBAL-STATE COMPACT

- County has previously provided requested revisions and authority for revisions at November 12, 2015 public meeting and again at February 11, 2016 public meeting.
- The purpose of this PowerPoint is to respond to the Tribe's March 1, 2016 request that County provide statutory and judicial authority.

AUTHORITY FOR COUNTY'S REVISIONS TO SECTION 13.4 OF TRIBAL-STATE COMPACT (Cont.)

- The Tribe is proposing a limited waiver of sovereign immunity but is asking the County for an unlimited waiver.
- County is a political subdivision of the State.
- If the goal of the Tribe is for the County to provide a reciprocal “parallel” waiver, the County is already agreeing to that because the Government Claims Act is the vehicle through which the State has already provided a limited waiver of immunity for the County.

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Delete County waiver because:

- The Government Claims Act (Gov. Code § 810 et. seq.) is a state statutory scheme that is a limited waiver of sovereign immunity. (*Hernandez v. Isaac McClanahan* (1998) 996 F. Supp. 975.) Thus, by law, the County already has made a limited waiver.
- Other than some procedural requirements, County does not have authority to waive immunity. (*Dixon v. City of Turlock* (1990) 219 Cal.App.3d 907.)
- Unreasonable to ask County to waive sovereign immunity because Tribe is asking for Supervisors to waive individual liability. (Government Code section 820.9.)

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2015 State Compact Language requires revisions because:

- The State Compact waiver was written for an agreement that is under the federal Indian Gaming Regulatory Act. (25 U.S.C.S. § 2701 et. seq.)
- In the State Compact, the state is waiving sovereign immunity. Under state law by statute, the State waives its sovereign immunity only for purposes of compacts under the Indian Gaming Regulatory Act. (Gov. Code section 98005.)
- The State's waiver for gaming compacts has been upheld by the California Supreme Court. (*Hotel Employees and Restaurant Employees International Union v. Gray Davis* (1999) 21 Cal.4th 585.)
- Thus, the state is allowed by state law to provide a waiver for IGRA agreements.

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Add Tribal waiver of exhaustion of tribal administrative or judicial remedies because:

- Included in Tribe's proposed 2011 Waiver of Sovereign Immunity.
- *Atwood v. Fort Peck Tribal Court* (2008) 513 F.3d 943- Case was dismissed for failure to exhaust tribal remedies.
- County's request is reasonable because County does not have the Tribal Constitution, ordinances or resolutions, and we do not even know what the tribal remedies or judicial procedures would be and they could change over time.

AUTHORITY FOR COUNTY'S REVISIONS TO SECTION 13.4 OF TRIBAL-STATE COMPACT (Cont.)

Add Tribal Resolution/Ordinance Authorizing Waiver and Signature because:

- *Star Tickets v. Chumash Casino Resort* (October 2015) State of Michigan Court of Appeals, No. 322371.
- *Star Tickets* case involved breach of contract action involving Chumash Casino Resort, and Tribe argued that case barred by sovereign immunity because Ms. Carrasco was marketing assistant for Casino. Tribe claimed she was not authorized to sign agreement because Enterprise Board never authorized her to waive or to sign and Board did not approve agreement or authorize waiver.
- At the public meeting on November 12, 2015, Tribal representatives reported the whole Tribe needed to vote to authorize Chairman Armenta to waive immunity and to sign any agreement.

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TRIBAL-STATE COMPACT (Cont.)

Add Letter from Tribe's Legal Counsel stating waiver is binding and enforceable because:

- California Department of Justice standard form waiver language.
- Discussed at November 12, 2015 public meeting.
- Improve enforceability because court could rely on representation of Tribal counsel that this is enforceable waiver.