

SANTA YNEZ BAND OF CHUMASH INDIANS

ATTACHMENT 2

P.O. BOX 517 · SANTA YNEZ · CA · 93460

Tel: 805.688.7997 · Fax: 805.686.9578

www.santaynezchumash.org

BUSINESS COMMITTEE

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Date: October 12, 2016

TO: Supervisor Farr and Adams:

Re: DRAFT Terms and Conditions Responses

On behalf of the Santa Ynez Band of Chumash Indians I want to thank the Board of Supervisors for appointing Supervisors Doreen Farr and Peter Adams to the Board of Supervisors Ad Hoc Subcommittee on Santa Ynez Valley Band of Chumash Indians Matters. These meetings have been productive and enlightening to understand the needs and positions of the Tribe and the County. We have had many hours of conversation, research and dialogue to clarify and resolve issues for the Tribe and County over the use and ownership of the property known as Camp 4. We are also thankful to the Community for their important input to this very public process.

Over the past year we have been meeting to help the Tribe understand the position of the County and our hope for the County to understanding the position of the Tribe. This is an important step toward continued positive relationships in pursuing government to government solutions.

These meeting have laid the groundwork for the attached proposal, addressing all of the issues as outlined in the Ad Hoc Subcommittee Term Sheet Proposals and Responses 12/10/15 - 3/01/16, for your review and referral to the Board of Supervisors as well as to our Tribal membership at large.

We ask for careful consideration of this proposal and approval in concept for moving forward with Fee to Trust and support for Congressional action on Camp 4.

Sincerely,

Kenneth Kahn
Chairman
Santa Ynez Band of Chumash Indians

cc:
Mona Miyasato, County CEO
Rachel Van Mullen, County Counsel

PROPOSAL TO COUNTY FOR 10-21-16 MEETING

Sovereign Immunity: As stated in the AD Hoc Committee Terms and Proposals document, the Tribe is pleased that this issue has been resolved to the satisfaction of all parties. This opens the process for the County to support Fee to Trust through an act of Congress.

Camp 4: The Tribe will continue on its current path to pursue legislation to place the land known as Camp 4 into Tribal Trust. We ask the County to support HR 1157 and successor legislation which outlines the use of the land specific for housing and tribal facilities as outlined in the Environmental Assessment (EA) for the Camp 4 Project. The Tribe also requests that the County withdraw its appeal of the Notice of Decision for Camp 4 dated Dec. 24, 2014. The Tribe will submit this agreement to the Secretary of the Interior for their review and approval and use its best efforts to obtain such approval.

Gaming Limitations: Gaming is regulated on Camp 4 pursuant to the Indian Gaming Regulatory Act, 25 U.S.C. Sec. 2701, et seq. (IGRA), the California-Chumash Tribal-State Compact (Compact) and HR 1157 and its successors. HR 1157 provides as follows:

HR 1157, Section 2. (d) RESTRICTED USE OF TRANSFERRED LANDS.—The Tribe may not conduct, on the land described in subsection (b) taken into trust for the Tribe pursuant to this Act, gaming activities—

(1) as a matter of claimed inherent authority; or

(2) under any Federal law, including the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) and regulations promulgated by the Secretary or the National Indian Gaming Commission under that Act.

Fee in lieu of Property Taxes/Property Valuation Assessment: Due to our collaborative process the Tribe agrees with the County to pay 38% of 1% based on an initial assessment of the property but only on the improvements on the portions that are distributed as land assignments for the Tribal members alive when Camp 4 was acquired in 2010 and their descendants (Land Assignments) and to be used by them for housing. As these parcels are developed each will have an initial assessment and reassessed with a change in ownership and /or a substantial property upgrade as with other residential properties throughout Santa Barbara County. The County may use these funds for any purpose they deem necessary. Undistributed lands owned by the Tribe and not distributed as Land Assignments, Tribal buildings and other structures and infrastructure built by the Tribe shall not be assessed. To the extent the Tribe or a Tribal Member or descendant does not agree with any County assessment then there shall be a procedure to appeal such assessment to a mutually agreeable neutral third party appraiser.

Term/Contract Reopener: We agree with the County that the term should be longer than the current Compact with the State as suggested by the Tribe. The initial term of the agreement is proposed to be the term of the current Compact and we agree to extend the term of this agreement to coincide with successive Compacts with the State of California.

Reopener for Loss of Gaming Exclusivity Same as In Compact: We propose a provision identical to Section 4.6 of the Compact, that “[i]n the event the exclusive right of Indian tribes to operate Gaming Devices in California is abrogated by the enactment, amendment, or repeal of a State statute or constitutional provision, or the conclusive and dispositive judicial construction of a statute or the State Constitution by a California appellate court after the effective date of its Gaming Compact that Gaming Devices may lawfully be operated by another person, organization, or entity (other than an Indian tribe) within California, the Tribe shall have the right to exercise one of the following options: (1) Terminate its Gaming Compact, in which case the Tribe will lose the right to operate Gaming Devices and other Class III Gaming authorized by its Compact and this Agreement shall also terminate at the same time as the Gaming Compact; or (2) Continue under the Gaming Compact with an entitlement to a reduction of the rates paid and with a proportionate decrease in any Fee in lieu of Property Taxes.”

Building Codes/Environmental Impacts: The Tribe continues to meet/exceed all County Building Codes for its projects and we agree that it is critical that building codes are an important structural element to any agreement. We will follow, at a minimum, all of the State and Federal building codes as outlined in the Compact and Federal regulations that govern building on Tribal land. The Tribe will comply with fire codes as outlined in the Compact as well as federal law. The Tribe will implement in good faith relevant portions of the Santa Ynez Valley Community Plan (SYVCP). The Tribe will follow the terms all of the current valid recorded easements in place at the time of the agreement.

Water and Sewer: The Tribe will comply with the federal EPA and ACOE which governs wastewater plans for all tribal properties. As for groundwater, the Tribe will try to participate as a member or by agreement in any Groundwater Sustainability Agency (GSA) in the Santa Ynez Uplands Groundwater Basin when established. The Tribe will meet with the SYRWCD, its Irrigation District No. 1, and the County as its local water agencies in discussions about any concerns they may have and continue to promote the use of Tribal recycled treated waste water. The Tribe will continue to assist using such recycled waste water for fire and other community emergency situations as it has done in the past.

Sewer Analysis: The current Casino Wastewater Treatment plant is operated by the Santa Ynez Community Services District in compliance with State law (so-called “Title 22” standards). The Tribe has received a permit from the Central Coast Regional Water Quality Control Board in August 2015 that the Tribe’s tertiary treated wastewater is clean enough to use as recycled water off the Reservation. The Tribe is planning the same or better waste water treatment and recycling system for Camp 4.

Water Analysis: In recognition of the drought conditions, the Camp 4 project combines water savings from removing 50 acres of irrigated grape vines and recycled tertiary treated waste water. Housing and other structures will all have water recycling and conservation features. As a result, water use calculations for the one-acre lot preferred alternative (Alternative B) in the Environmental Assessment and Finding of No Significant Impact (FONSI) show no net increase in water demands.

FONSI, Page 6, www.chumashEA.com

Project design, implementation of BMPs, and mitigation measures would ensure impacts to water resources would be less than significant. Refer to Final EA Sections 2.2.5, 2.2.6, 2.2.8,

2.2.10, 2.3, 2.3.1, 4.1.2, 4.2.2, and 5.2. Under existing conditions, approximately 256 acre-feet per year (AFY) of groundwater is utilized on the project site for irrigation of the existing 256-acre vineyard. The net water demand for potable water for Alternative A is 348 AFY, including 172 AFY for residential (and a reduction of 30 AFY of recycled water) and 206 AFY for vineyard irrigation. The net water demand for potable water for Alternative B is 256 AFY, including 84 AFY for residential/Tribal facilities (and a reduction of 34 AFY of recycled water) and 206 AFY for vineyard irrigation. Accordingly, implementation of Alternative A would result in an increase of 92 AFY over existing conditions and **implementation of Alternative B would result in no net increase in water demands over existing conditions.**

Preservation of Open Space: In recognition of Highway 154 as a scenic highway, the Tribe will place the first [20] feet east of Highway 154 as a set-back for no construction of any buildings. Pursuant to Supervisor Farr's suggestion the Tribe will enter into conversations with the Land Trust of Santa Barbara County and will pursue Tribal mechanisms for placing open space into a Tribal land trust.

Consideration of Offsets: The Tribe agrees with the County to not include any offsets for any payments made from the Special Distribution Fund (SDF). The Tribe shall receive a payment-in-lieu of taxes credit for each fifty cents of every dollar it pays for any services, equipment or overhead pursuant to the separate contracts between the Tribe and the County for fire and law enforcement services.

Sales and TOT taxes on Camp 4: The Tribe has no plans to generate sales or TOT but since the County has requested it we are including the following: The Tribe agrees to levy a tribal sales and TOT tax equal to that of the County on Camp 4, the proceeds of which shall be solely dedicated to on Reservation improvement projects funded by the Tribe or granted to local governments and school and other districts. This is the same Tribal policy for the use of sales and TOT tax for the current on reservation operations.

Use of Tribal Hall Facility: The Tribe understand the County's concern over traffic and other mitigations for an excessive use of the Tribal Facilities on Camp 4 property and is planning to use these facilities primarily for tribal purposes as exemplified by the current use of Tribal administrative facilities. The new Tribal Hall and Health Clinic in the EA are approximately the same square footages as the current Tribal Hall and Health Clinic. Use restrictions for both the Tribal Hall and Health Clinic UNDER TRIBAL LAW shall be the same as or more restrictive than the current Tribal Hall and Health Clinic (which for example currently include a no alcohol use policy). Any large more community oriented events will be at other properties owned or operated by the Tribe or on temporary sites within the non-residential areas of Camp 4.

Williamson Act: We thank the County for their willingness to work with the Tribe on cancellation of the Williamson Act. At this time the Tribe is interested in parcels 2 and 4 and a waiver of penalty fees.

BUILDING CODE SECTIONS FROM THE NEW COMPACT:

SECTION 2.0. DEFINITIONS.

Sec. 2.1. **“Applicable Codes” means the California Building Code and the California Public Safety Code applicable to the County**, as set forth in titles 19 and 24 of the California Code of Regulations, as those regulations may be amended during the term of this Compact, including, but not limited to, codes for building, electrical, energy, mechanical, plumbing, fire and safety.

Sec. 6.4.2. Gaming Facility.

(a) The Gaming Facility authorized by this Compact shall be licensed by the Tribal Gaming Agency in conformity with the requirements of this Compact, the Tribe’s Gaming Ordinance, IGRA, and any applicable regulations adopted by the NIGC. The license shall be reviewed and renewed every two (2) years thereafter. Verification that this requirement has been met shall be provided by the Tribe to the State by sending a copy of the initial license and each renewal license to the State Gaming Agency within twenty (20) days after issuance of the license or renewal. The Tribal Gaming Agency’s certification that the Gaming Facility is being operated in conformity with these requirements shall be posted in a conspicuous and public place in the Gaming Facility at all times.

(b) To assure the protection of the health and safety of all Gaming Facility patrons, guests, and employees, the Tribe shall adopt, or has already adopted, and shall maintain throughout the term of this Compact, an ordinance that requires any covered Gaming Facility construction to **meet or exceed the Applicable Codes**. The Gaming Facility and construction, expansion, improvement, modification, or renovation will also comply with the federal Americans with Disabilities Act, P.L. 101-336, as amended, 42 U.S.C. § 12101 et seq. Notwithstanding the foregoing, the Tribe need not comply with any standard that specifically applies in name or in fact only to tribal facilities. Without limiting the rights of the State under this section, reference to Applicable Codes is not intended to confer jurisdiction upon the State or its political subdivisions. **For purposes of this section, the terms “building official” and “code enforcement agency” as used in titles 19 and 24 of the California Code of Regulations mean the Tribal Gaming Agency or such other tribal government agency or official as may be designated by the Tribe’s law.**

FIRE CODE SECTIONS FROM THE NEW COMPACT:

6.4.2(j) The Tribe shall also take all necessary steps to reasonably ensure the ongoing availability of sufficient and qualified fire suppression services to the Gaming Facility, and to reasonably ensure that the Gaming Facility satisfies all requirements of titles 19 and 24 of the California Code of Regulations applicable to similar facilities in the County as set forth below:

(1) Not less than thirty (30) days before the commencement of the Gaming Activities, and not less than biennially thereafter, and upon at least ten (10) days’ notice to the State Gaming Agency, the Gaming

Facility shall be inspected, at the Tribe's expense, by an independent expert for purposes of certifying that the Gaming Facility meets a reasonable standard of fire safety and life safety.

(2) The State Gaming Agency shall be entitled to designate and have a qualified representative or representatives, which may include local fire suppression entities, present during the inspection. During such inspection, the State's representative(s) shall specify to the independent expert any condition which the representative(s) reasonably believes would preclude certification of the Gaming Facility as meeting a reasonable standard of fire safety and life safety.

(3) The independent expert shall issue to the Tribal Gaming Agency, the County, and the State Gaming Agency a report on the inspection within fifteen (15) days after its completion, or within thirty (30) days after commencement of the inspection, whichever first occurs, identifying any deficiency in fire safety or life safety at the Gaming Facility or in the ability of the Tribe to meet reasonably expected fire suppression needs of the Gaming Facility.

(4) Within twenty-one (21) days after the issuance of the report, the independent expert shall also require and approve a specific plan for correcting deficiencies, whether in fire safety or life safety, at the Gaming Facility or in the Tribe's ability to meet the reasonably expected fire suppression needs of the Gaming Facility, including those identified by the State Gaming Agency's representatives. A copy of the report shall be delivered to the State Gaming Agency, the County, and the Tribal Gaming Agency.

(5) Immediately upon correction of all deficiencies identified in the report, the independent expert shall certify in writing to the Tribal Gaming Agency and the State Gaming Agency that all deficiencies have been corrected.

(6) Any failure to correct all deficiencies identified in the report within a reasonable period of time shall be deemed a violation of this Compact, and any failure to promptly correct those deficiencies that pose a serious or significant risk to the health or safety of any occupants shall be a violation of this Compact and grounds for the State Gaming Agency to prohibit occupancy of the affected portion of the Gaming Facility pursuant to court order until the deficiency is corrected.

(7) Consistent with its obligation to ensure the safety of those within the Gaming Facility, the Tribe shall promptly notify the State Gaming Agency of circumstances that pose a serious and significant risk to the health or safety of occupants and take prompt action to correct such circumstances. Any failure to remedy within a reasonable period of time any serious and significant risk to public safety shall be deemed a violation of this Compact, and furthermore, any circumstance that poses a serious or significant risk to the health or safety of any occupant shall be grounds for the State Gaming Agency to prohibit occupancy of the affected portion of the Gaming Facility pursuant to a court order until the deficiency is corrected.