



CULBERTSON, ADAMS & ASSOCIATES, INC.

October 21, 2016

County of Santa Barbara
Ad Hoc Subcommittee Regarding Santa Ynez Valley
Band of Chumash Indian Matters
c/o Mona Miyasato, County Executive Office
105 E. Anapamu
Santa Barbara, CA 93101

SUBJECT: Transmittal of Comments on Agenda for October 21, 2016
meeting

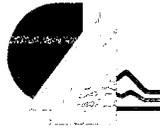
Dear Ms. Miyasato:

I have reviewed the October 12, 2016 proposal from the Santa Ynez Band of Chumash Indians ("Band"). I commend Chairman Kenneth Kahn and his Business Committee for coming to terms with the County on many items of great importance. While my position against Fee to Trust and Congressional action is on record, I am pleased that the Band has agreed to the County proposals in part. I also urge the Band and the County to focus on a reopener for lands within Camp 4 that have no current land use proposal.

While further discussions occur in an effort to reach complete consensus between the County and the Band, I wanted to raise an issue that should be addressed before any agreement is presented to the Board of Supervisors.

Wells Fargo Bank should be a party to this agreement for enforcement purposes, or should subordinate its interest to regulation pursuant to the agreement

The Band can only agree to terms and waive its sovereignty to the extent it has not surrendered rights to another party. It has been widely reported that Wells Fargo Bank ("WFB") has extended a liberal line of credit to the Band, facilitating the acquisition of Camp 4 and the 356 acre property, with more transactions potentially pending. While I have been told by tribal representatives that these loans are secured by casino revenue, concern has also been expressed by the Band that casino revenue may not always be available to answer for the Band's expenses (debt service, per capita payments, tribal health and education services, etc.).



This raises the question of what recourse has been made available to Wells Fargo Bank should the Band have insufficient revenue to meet its loan obligations. For example, if the Band is unable to meet its loan obligations, may Wells Fargo Bank elect to lease the trust land to a developer and be free of restrictions under this agreement? The County may have no enforcement rights under those circumstances because the agreement as to recourse options with Wells Fargo would have preceded the County/Band agreement.

The possibility of Wells Fargo Bank leasing land and establishing development inconsistent with this agreement is suggested by Wells Fargo Bank's own press releases.

Over the years, Wells Fargo Bank has been open about its attraction to fee to trust transactions with the Indian tribes, commenting on multiple occasions that it finances acquisitions willingly because of the ability to receive revenue tax free through development that is free of local restrictions. Many acquisitions by the Indian Land Trust Fund have been financed this way. It is clear that Wells Fargo Bank has significant intentions in this lending area, as in 2003 WFB reported \$500 million in loans to 38 tribes, or approximately \$14 million per tribe. Recent reports suggest that the line of credit to the Band alone may equal or exceed \$500 million. Even if the line of credit is smaller, the acquisition costs of the two parcels (approximately \$57 million) as well as the major new hotel tower demonstrate that WFB has a significant investment in the outcome of tribal development on trust lands.

Recent controversies regarding WFB also provide a basis for great caution in this regard. It is clear from Congressional investigations and news stories that WFB uses non-traditional means to increase its revenues.

The relationship between WFB and the Band and the recourse available to WFB in any loan or financing agreements must be carefully considered before any agreement is finalized. Many governmental agencies routinely use the subordination clause to enforce the agreement against the lender as well. For example, at the California Coastal Commission, an agreement to, say, provide an easement requires the subordination of any lender, in spite of the fact that the Coastal Commission has continuing enforcement authority no matter who owns the land. Here, the County is not likely to have that continuing authority.

Leases of trust lands have now been proposed without Bureau of Indian Affairs approval.

Recently, a notice in the Federal Register announced that the Bureau of Indian Affairs ("BIA") will no longer review the lease of trust lands controlled by the Chemehuevi Indian tribe. This means that tribe may now be allowed to lease lands



without prior approval of the BIA. While the BIA has always taken the position that tribes control the use of their trust land, leasing of trust lands for use to outside parties was subject to BIA approval which provided for some review and remedy against any BIA approval. The fact that BIA is surrendering this power should be taken very seriously by the County, particularly since such a large and powerful lender is involved.

The County should require a proof of the interests held by WFB and the scope of their recourse power.

Before committing to any agreement, the County should be absolutely certain that the Band has the full authority, under any circumstances, to meet the terms of the agreement. Without this assurance, the waiver of sovereignty might not be sufficient, since the Band can only waive the rights it possesses at the time of signing.

I suggest that, since loan agreements and recourse instructions are confidential between the parties, the County offer to review these documents confidentially, and without disclosure to the public of the terms. Upon review, County Counsel could then report to the Board that the agreement either needs adjustment, or that the agreement could be enforced irrespective of the loan and financing obligations. Without such a review, the terms of the agreement may not be enforceable.

Sincerely,


M. Andriette Culbertson

cc: Santa Ynez Band of Chumash Indians, Business Committee