

C. David and M. Andriette Culbertson

October 3, 2017

Member of the Board of Supervisors
County of Santa Barbara
105 East Anapamu Street
Santa Barbara, CA 93101

SUBJECT: Item A-19 – Set hearing – Agreement between County and Chumash

Honorable Board Members:

I am writing to convey our preliminary comments on the above captioned item. Our main concerns surround the speed with which this agreement is being considered, the terms which are not substantiated or explained and the County's agreement to give unprecedented support to a Congressional effort that will eliminate the constitutional rights of many in the Santa Ynez Valley to due process.

Timing

Why the rush? It seems like this agreement is driven by the alleged specter of HR 1491 being signed into law. It has a long way to go, but whether it becomes law or not, the County will have signed away all of its rights before it knows the outcome. If HR 1491 does not become law, the taxpayers - the persons represented by the Board - will have lost an important tool merely because the Board decided that HR 1491 might pass.

Moreover, this is not what the public was promised on February 4, 2017 when these discussions were approved by the Board. Here is a passage from the February 7, 2017 Board item:

In addition to periodic open, public meetings between the short-term, advisory Ad Hoc Subcommittee of the Board of Supervisors and the Santa Ynez Band of Chumash Indians, authorize the Ad Hoc Subcommittee to engage in discussions, not decisions, directly with the Santa Ynez Band of Chumash Indians outside of open, public meetings; [Emphasis added]

There were no meetings between February 7, 2017 and the informal public forum on September 25, 2017, attended by about 150 people. The agreement was not available for that forum, and the materials and presentation shed no light on the conclusions of the County as to the terms.

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Although the agreement was posted at the end of the week, neither the agreement nor the Board letter explain how the County reached, say, a conclusion that about \$178,000 per year was adequate compensation for impacts and costs.

Support for HR 1491 If an agreement is reached

The support of the County for HR 1491 is inappropriate given that the County joined with the community in the lawsuits against the BIA. HR 1491 will completely prevent pursuit of existing litigation for others who have invested countless dollars and hours in challenging the BIA approvals. While we are not litigants, the County proposes to take action to eliminate the constitutional right to challenge the federal government (the executive branch) in court (the judicial branch). I believe this is a very serious breach by the County.

Recent Developments

The Patchak case has been accepted by the U.S. Supreme Court and no decision will be available until next year. A key question in this litigation is separation of powers. If the County supports HR 1491 before the USSC rules, you are taking a risk that the ruling will uphold the due process right of litigation. No one can accurately predict what the Court will do. However, your action to support HR 1491 will actively punish members of the community who actually want to exercise their constitutional rights.

Transparency

Support of HR 1491 is unnecessary to reach agreement. If the Chumash are insisting on that support in exchange for any agreement, then that fact should be disclosed to the public. Settlement negotiations cannot obstruct the public's right to know when the County is proposing such a harmful and unprecedented step.

Hearing Schedule

The Board hearing schedule is woefully inadequate. At the hearing of February 7, 2017, the public was assured by the Board that there would be a robust and adequate public dialogue. The community was just presented a summary of deal points with little justification or explanation, and the "presentation" was simply a rehearsal of the reading. The County has met privately for over 6 months with the Chumash and the public has patiently waited. But if we had known that the public's consideration would be rushed after all this time, I believe that we, at least, would have opposed the arrangement. The schedule proposed hardly represents a commitment to involve the public, as opposed to a "rubber stamp" of something decided behind closed doors.

Conclusion

We suggest that the Board and the Committee seriously consider altering its position. This is an historic agreement. We do not oppose an agreement, but frankly we were considering a much more thorough report on the genesis of the terms and the reasons for the provisions. The County should never support Congressional legislation that is forced by the Chumash. The Board does

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not work for Congress. It represents the people of this County. We would rather have no agreement than support for something that is diametrically opposed to the established due process conditions in this country.

Sincerely,

C. David Culbertson

M. Andriette Culbertson