

## C. David and M. Andriette Culbertson

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October 30, 2017

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

SUBJECT: Camp 4 MOA hearing – Agreement Between County and Chumash

Honorable Board Members:

We are writing to re-state two important comments made in our letter of October 3, 2017 which have not been fully addressed. These issues must be addressed to provide transparency into this agreement. We also note our support for the October 25, 2017 letter of Brian Kramer.

### **The Board must not support HR 1491 in any way**

Each member of the Board of Supervisors is elected by their respective constituents to carry out the laws of the State and the County on behalf of the public. Having been elected to office to carry out these duties, the Board should not delegate those duties to Congress.

The support of the County for HR 1491 is also inappropriate given that the County joined with the community in the lawsuits against the BIA. Contrary to the explanation in Ad Hoc Committee materials, HR 1491 will likely prevent pursuit of existing litigation for others who have invested countless dollars and hours in challenging the BIA approvals. It is not essential to have HR 1491 expressly dismiss litigation. Litigation will likely be subject to a motion to dismiss on the part of the BIA because of mootness if HR 1491 is passed. **The County should not lend its credibility to this process, especially when the Chumash initiated this aggressive Congressional effort in spite of the County's cooperation in reaching a tentative agreement.** While we are not litigants, the County proposes to take an action that jeopardizes the constitutional right to challenge the federal government (the executive branch) in court (the judicial branch). We believe this is a very serious breach by the County and interferes with the separation of powers our government observes on our behalf.

Any reliance by the County that its agreement is “strengthened” by inclusion in HR 1491 is misplaced. If the Chumash, as a sovereign entity, have that much influence over our Congress, then they will have sufficient influence in the future to rescind whatever HR 1491 provides. However, if the County does not support HR 1491 with the agreement included, and it passes, and the Chumash cause a future rescission through Congress, the County will still have its

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waiver of tribal sovereign immunity to enforce the agreement. Either the County believes the waiver is enforceable, or the County does not.

Finally, if the Chumash have insisted on support for HR 1491 in order to even consider an agreement, then the public should know that. The County should not hide that fact in settlement negotiations. The Chairman of the Chumash, Kenneth Kahn, has repeatedly stated that the Chumash are working on this agreement to be “neighbors”. If the Chumash would not enter into an agreement unless the County supports HR 1491, then it is not a “neighborly” act. It is impermissible leverage. The County should disclose the basis for its support in this context, so that the public can gauge the values of its elected representatives.

Simply stated, 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.

### **The annual payment is not adequately explained**

The latest materials from the Ad Hoc Committee simply state that the County and Chumash went through several “models” to arrive at the amount. Since the stated amount represents about \$1,200 per house – a dramatic difference from the property taxes of others – the County should explain what components that are to be covered by this amount, and what is covered by the Chumash services. For example, if the Chumash offer after-school programs, and the County does not, that should not be treated as an offset. But it is clear that there is no explanation at all of how this number was reached. Since the Board will be basically shifting this burden to other taxpayers in the form of new taxes or reduced services, the public has a right to know what went into the equation. No agreement should be approved until this explanation is made.

### **Conclusion**

We suggest that the Board 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 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