

Vidal, Perla

From: Thompson, Sonia on behalf of County Executive Office
Sent: Monday, August 29, 2016 3:26 PM
To: Miyasato, Mona; sbcob; Board Letters
Cc: Maus-Nisich, Terri
Subject: FW: Analysis of the proposed waiver of immunity to be part of any contract reached by the Countywith the Santa Ynez band
Attachments: cover letter to Ad Hoc committee.doc



#2

From: James Marino [<mailto:jmarinolaw@hotmail.com>]
Sent: Monday, August 29, 2016 2:07 PM
To: Adam, Peter; Farr, Doreen; County Executive Office; Lavagnino, Steve; Wolf, Janet
Subject: Analysis of the proposed waiver of immunity to be part of any contract reached by the Countywith the Santa Ynez band

Here (attached) is my and my client's view of the most important problems with the proposed "Waiver of Sovereign" immunity provisions to be a part of any agreement reached by the County with the Santa Ynez Band regarding fee to trust transfers pursuant to 25 C.F.R. part 151.11 or 25 C.F.R. part 151.10

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County of Santa Barbara
Board of Supervisors
Ad Hoc Advisory Committee
On intergovernmental agreements
With the Santa Ynez Band of Mission Indians

28 August 2016

Dear Supervisors;

I have reviewed the proposed “waiver of sovereign immunity” to be used in connection with any agreement made between the County of Santa Barbara and the Santa Ynez band affecting the fee to trust transfer of the off-reservation parcels of land including the 1,427 acre Camp 4 land and other parcels pursuant to 25 CFR 151.11 or 25 CFR 151.10.

There are a number of problems with the proposed waiver however I will discuss only the most egregious ones here. The Agreement purports to ban or bar any and all third party beneficiary lawsuits. The County is subject to lawsuit for any failure to do things or for doing things not authorized by this contract regardless of whether the Santa Ynez band is entitled to a legal immunity by the common law Indian tribal immunity doctrine created by court decisions.

The County and Board of Supervisors are legally answerable to the citizens, land owners, business owners and voters of this County and may not escape liability by including a “*third party beneficiary clause*”, in an effort to evade that legal liability.

Because Indian tribes have become skillful in evading legal responsibility it is imperative that any waiver of liability not only be carefully drafted but the scope of that waiver be also carefully limited.

Accordingly this waiver provision needs to make it clear that the citizens, voters and land owners retain all their legal rights to sue the county and enforce provisions included in the agreement obviously made for their benefit and protection.

This contractual waiver needs to not only express that legal provision but also that the tribe is waiving any and all rights, in the event a lawsuit is brought against the county alone, and to seek dismissal of that lawsuit by using a claim that the Tribe is a party to the contract, are therefore indispensable or necessary to the lawsuit even though it is brought only against the County and claim they **MUST** be joined never the less, but of course, the tribe cannot be legally joined because the tribe has sovereign legal immunity resulting in dismissal.

There are ways to carefully draft such a waiver to protect the rights of the citizens and affected persons in this County to insure that the County does what it is required to do and/or doesn't do what it is not permitted to do under the proposed contract.

In addition, given the Santa Ynez Band's propensity to try to evade legal responsibility as they did in the Star Ticket lawsuit by claiming defects in the waiver of sovereign immunity, in that contract case, additional work needs to be done. The waiver needs to require the ordinance to be voted on by a majority of the tribal council (all adult tribal members who are the ruling body of the tribe) and a certification made in writing as to the validity of the vote and results and an express provision that the agreement is entered into by the County in reliance upon the certification and representation made by the tribe and their ruling council they have lawful authority and of the accuracy and legitimacy of the tribal council vote authorizing the waiver.

Very Truly Yours;

James E. Marino
Attorney for

“No More Slots”