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2017 OCT 30 PM 2:42

COUNTY OF SANTA BARBARA
CLERK OF THE

October 30, 2017

Via Hand Delivery

Joan Hartmann, Supervisor
Das Williams, Supervisor
Janet Wolf, Supervisor
Peter Adam, Supervisor
Steve Lavagnino, Supervisor
Santa Barbara County Board of Supervisors
105 East Anapamu Street
Santa Barbara, CA 93101

Re: Proposed Memorandum of Agreement
With the Santa Ynez Band of Chumash Indians
BOS File Number 17-00756

To the Honorable Members of the Santa Barbara County Board of Supervisors:

We represent San Lucas Ranch, LLC the owner of over 9,000 acres of ranchland adjacent to Camp 4 that will be negatively impacted by development the agreement allows. The San Lucas Ranch property, which originally encompassed Camp 4, has been owned and worked as agricultural land by the same family for almost 100 years.

The proposed agreement with the Santa Ynez Band of Chumash Indians ("Band") is not in the County's or the community's best interest. But more importantly, you lack authority to enter the agreement because it does not comply with land-use regulations, including the Santa Ynez Valley Community Plan ("Community Plan"). *See, e.g.*, *Summit Media LLC v. City of Los Angeles* (2012) 211 Cal.App.4th 921, 937 (agreement that does not comply with regulations is "invalid and unenforceable."). It is therefore an illegal agreement that will be voided when challenged in court.

You cannot avoid the agreement's illegality by rushing to approve it and make it effective. When inevitable disputes arise, the Band, like any competent party to a litigation, will raise your lack of authority to void the agreement. You have admitted repeatedly since 2013, as described below, that the intended development does not comply with the Community Plan and other regulations. It will therefore be easy to prove your lack-of-authority to enter the agreement.

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You should vote no on this agreement to protect yourselves and the County. If you believe that the agreement is in the County's best interest, you can then seek authority to approve it by following the process required to amend the Community Plan through full community involvement and environmental analyses. Until the Community Plan is amended you cannot enter the agreement.

You Have Admitted Repeatedly that the Development Violates Land-Use Regulations

If you approve this agreement, the lawsuit to invalidate it will be simple. The governing question will be whether it "further[s] the objectives and policies of the general plan and not obstruct their attainment." *Orange Citizens for Parks & Recreation v. Superior Court* (2016) 2 Cal.5th 141, 153. Any action that conflicts with the regulations "is invalid at the time it is passed." *Id.* (quoting *Lesher Comm'ns v. City of Walnut Creek* (1990) 52 Cal. 3d 531, 544). The County and its lawyers have already admitted repeatedly that the development, and therefore the agreement, is incompatible with the Community Plan. The following quotations, taken from letters and filings by the County and its lawyers, prove that the County recognizes the incompatibility and, therefore, that the agreement is invalid.

You have, for instance, admitted explicitly that the development is "incompatible" the County's General Plan and Community Plan:

- "The proposed development is incompatible with the County's General Plan, Santa Ynez Community Plan, and County land use regulations." County's Oct. 31, 2013 letter at 3 (emphasis in original).

- "As stated in its comments on both the Fee-to-Trust Application and Final EA, such a development contravenes rural area policy countywide and *is incompatible* with the County's General Plan, Santa Ynez Community Plan, and County land use regulations." County's Jan. 2015 Notice of Appeal at 10 (emphasis added) (citing County's July 2014 Comments on EA at 9-14, 16-22, 30-32 and County's Nov. 2014 Comments on FONSI at 9-13).

- The "development . . . *is incompatible* with the County's General Plan, Santa Ynez Valley Community plan, and County land use regulations." County's Dec. 2015 Appeal at 8 (emphasis added).

- "As discussed above, the development of 143 homes and a 12,000 square foot tribal facility with 250 parking spaces is incompatible with County land use plans and inconsistent with surrounding open space, agricultural, and ranch uses." County's Jan. 2017 Motion for Temp. Restraining Order at 19.

These admissions are sufficient to prove that the agreement does not comply with the General Plan or Community Plan. But they are buttressed by your further admissions that specific aspects of the development violate specific aspects of the General Plan and Community Plan. We focus below on just two such aspects, protection of agricultural land and limitation of urban sprawl.

The Agreement Does Not Preserve and Protect Agricultural Land

The Community Plan compels you to preserve and protect agricultural land, through goals, policies, and "unequivocal directives":

> **Policy LUA-SYV-2**: "Land designated for agriculture within the Santa Ynez Valley shall be preserved and protected for agricultural use." Community Plan at 73; *see id.* at 14 ("'**Shall**' indicates an unequivocal directive").
>
> **Agriculture**: "In rural areas, cultivated agriculture shall be preserved. . . ." Community Plan at 8
>
> **Goal LUA-SYV**: "Protect and Support Agricultural Land Use and Encourage Appropriate Agricultural Expansion." *Id.* at 73
>
> **Policy LUA-SYV-1**: "The County shall develop and promote programs to preserve agriculture in the Santa Ynez Valley Planning Area." *Id.*
>
> **Policy LUA-SYV-3**: "New development shall be compatible with adjacent agricultural lands." *Id.*

You admitted the importance of agricultural land to the Federal Government, stressing that County and local regulations require that agriculture be protected:

> Agriculture in California is valued as an economic and environmental benefit to the people of the state, nation, and world. . .. In light of its importance, the County prioritizes its preservation in planning documents and regulations: [list and relevant quotes from County Comprehensive Plan]. . .. Agriculture is similarly important at the community level. In the Santa Ynez Valley, agriculture is a strong component of community identity and a major contributor to the economy, including cattle grazing and wine production [cites to Community Plan EIR]. The Santa Ynez Valley also specifically identifies preservation of agriculture as a planning and regulatory goal: 'Agriculture should be preserved and protected as one of the primary economic bases of the Valley.' (Santa Ynez Valley Community Plan at p. 10.)" County's July 2014 Comments on EA at 10-12.

You also stated repeatedly that the proposed development fails this requirement. By way of example:

- "*Camp 4 is inconsistent* with current Agricultural zoning, the County zoning ordinance, and other County Codes such as the Agricultural Buffer and Grading ordinances." County's Oct. 2013 Comments on EA at 16; County's Jan. 2017 Motion for Temp. Restraining Order at 6-7.

- "Camp 4's proposed high-density residential development in the middle of an exclusively agricultural community and Tribal Facilities in Alternative B are *not compatible with agriculture*." County's July 2014 Comments on EA at 43 (emphasis added).

- "The proposed one-acre lots in Alternative B, as well as the Tribal Facilities *are in no way compatible with the existing land uses*." County's July 2014 Comments on EA at 44 (emphasis added).

- "The proposed acquisition of [the] land would convert the agricultural uses to residential, event, and tribal facility uses. The loss of agricultural land is of great significance to the State, region, and locality, as agriculture provides economic and environmental benefits to the public" and "protects the recharging of groundwater basin, wildlife habitats, open space, and visual relief for residents." County's Jan. 2015 Notice of Appeal to IBIA; County's Jan. 2017 Motion for Temp. Restraining Order at 6.

- "The trust acquisition and proposed development would implicate unique geographic considerations such as conversion of prime agricultural farmland, would threaten land use and regulatory requirements imposed for the protection of the environment and community" and would have "known negative impacts" on "on and off-site agricultural resources, including loss of grazing operations, urbanization of agriculture land, and compatibility with adjacent agricultural properties." County's Complaint at 11-12.

- "In addition to the direct loss of agricultural land, a high-density residential development and Tribal Facilities would pose problems to preserving neighboring agriculture. The project could cause trespassing, vandalism, nuisance complaints, and decreased farming potential or loss of crop productivity." County's July 2014 Comments on EA at 17 (citing Santa Barbara County Land Use & Development Code).

The Development Impermissibly Expands Urban Development

The Community Plan, also directs that you "shall" limit urban development to the Santa Ynez, Los Olivos, and Ballard urban boundaries, which "shall" be the limits of urban development, and which "shall not" be extended except as part of an update of the Community Plan. Community Plan at 22. These requirements are also enshrined in the County's General Plan:

> **Urbanization**: "[T]o sustain a healthy economy in the urbanized areas and to allow for growth within its resources and within its ability to pay for necessary services the County shall . . . prevent scattered urban development." Community Plan at 8 (quoting General Plan).
>
> **Land Use**: "Future residential development should not be located on prime food producing or pasture land, but close to existing public services. The beauty of the land should be preserved by limiting urban sprawl and creating buffer zones to maintain the individual character of each town." Id. at 8 (quoting Comprehensive

As with preservation of agricultural land, you admitted repeatedly that the proposed development violates these requirements:

- "Camp 4 is comprised solely of rural, agricultural lands. . .. Both development alternatives would result in the conversion and urbanization of large amounts of those lands to residential subdivision. . .. The loss of agricultural land would total 1,227 acres. Further, the historical and current cattle grazing operations on the project site could be totally eliminated." County's July 2014 Comments on EA at 16-17 (citations omitted).
- "The development of 143 residences and an over 12,000 square foot tribal facility with parking for 250 cars would constitute a significant change in the current land use that is inconsistent with surrounding uses; it would be considered an urban development in the middle of a rural area." County's Dec. 2015 Appeal to ASIA at 8.
- "The growth of urban development in agricultural areas brings land use conflicts that can increase regulatory costs and lead to trespass, vandalism, nuisance complaints, littering, and grass fires, which decrease farming potential and crop productivity." County's Jan. 2017 Motion for Temporary Restraining Order at 6; *see also* County's Nov. 2014 Comments on FONSI at 9; County's Dec. 2015 Appeal to ASIA at 12.

These are just a few examples of the times you admitted that the development does not comply with the Community Plan and other governing regulations. The almost 300 pages of documentation you filed opposing the development since 2013 include many more such examples, such as how the development ignores the Community Plan's resource adequacy requirements. *See e.g.*, Community Plan at 9 ("Economic and population growth shall proceed at a rate that can be sustained by available resources"), 10 ("Planning for the Valley should be geared to the concept of living with the resources available locally."), 75-157 (specific requirements for resource adequacy); County's July 2014 Comments on EA at 45-49 (explaining ways in which development ignores resource adequacy requirements); County's Nov. 2014 Comments on FONSI at 13-22 (same); County's Jan. 2017 Motion for Temp. Restraining Order at 7-8 (same).

These admissions, which you cannot ignore, prove that the proposed agreement is indisputably incompatible with the Community Plan.

Your Ability to Negotiate Agreements Does Not Allow You to Enter this Agreement

The law and the Community Plan limit your ability to enter agreements to settle disputes. Your general ability to conduct litigation and settle matters is constrained by the requirement that any resulting settlement comply with your other legal obligations. Just as you could not, as part of a settlement, approve siting of an opium den, you cannot settle a case by approving any other land-use that violates land-use regulations. *See, e.g.*, *Summit Media LLC v. City of Los Angeles* (2012) 211 Cal.App.4th 921, 937 (government cannot enter agreement that "exempts settling parties from ordinances and regulations that apply to everyone else and would, except for the agreement apply to the settling parties.").

Similarly, the Community Plan requires that any agreement you enter that takes land out of your jurisdiction must, *inter alia*, encourage compatibility with the surrounding area and mitigate environmental impacts to the County. In the absence of such an agreement, you are unequivocally directed to "oppose the loss of jurisdictional authority." Community Plan at 22-23.

As described above, you have admitted that the agreement is generally incompatible with Community Plan and the surrounding area. You have further admitted that the description of the residences to be built "do not provide the necessary analysis to determine similarity with other developments—such as the number of lots with residential homes in each area and the size of those homes and lots. Further, they are inaccurate." County's July 2014 Comments on EA at 44. You therefore cannot make the requisite finding that the agreement encourages compatibility with the surrounding area.

You have similarly admitted that the agreement's mitigation measures do not "provide adequate protection" because they do not sufficiently minimize or avoid impacts to land resources, water resources, air quality, biological resources, or public services. *See* County's Jan. 2015 Notice of Appeal to IBIA at 14-15 (citing County's July 2014 Comments on EA at 35-

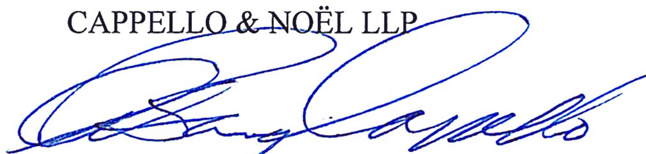
40, County's Nov. 2014 Comments on FONSI at 25-27). Proving the illusory nature of the mitigation measures, as you have explained, they generally refer vaguely to "Best Management Practices" and provide no data regarding their effectiveness or ability to mitigate any impacts. *Id.* at 15; County's Jan. 2017 Motion for Temp. Restraining Order at 12-14; County's July 2014 Comments on EA at 35-40; County's Nov. 2014 Comments on FONSI at 25-27. Without this information, you cannot find that the agreement mitigates environmental impacts.

The enclosed complaint and request for a temporary restraining order that we filed last week provide additional details on why you cannot enter the agreement. The procedural grounds on which the Court denied our motion for a temporary restraining order will be obviated if you vote to approve the agreement. We are therefore prepared to seek a new temporary restraining order if you approve the agreement. We will of course seek all available relief if you take steps to make the agreement effective or implement its terms (*e.g.*, signing the agreement, sending a letter to the U.S. Congress, dismissing your lawsuit) before our renewed temporary restraining order is heard.

The issue of your authority ought to be resolved before you commit yourselves and the County to the terms of this agreement.

Very truly yours,

CAPPELLO & NOËL LLP



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Enclosures

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San Lucas Ranch, LLC,
a California Limited Liability Company

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA BARBARA

SAN LUCAS RANCH, LLC, a California Limited Liability Company,

Plaintiff,

vs.

COUNTY OF SANTA BARBARA; SANTA BARBARA COUNTY BOARD OF SUPERVISORS; JOAN HARTMANN, DAS WILLIAMS, JANET WOLF, PETER ADAM, STEVE LAVAGNINO IN THEIR OFFICIAL CAPACITY AS SUPERVISORS OF THE COUNTY OF SANTA BARBARA; and DOES 1-30, inclusive,

Defendant.

Case No.: 17CV04794

COMPLAINT FOR:

1. Declaratory Relief (CCP § 1060)
2. Injunctive Relief (CCP § 526)

1 Plaintiff SAN LUCAS RANCH, LLC ("Plaintiff") alleges as follows:

2 1. All allegations made in this complaint are based upon information and belief, except
3 those allegations which pertain to Plaintiff, which are based on personal knowledge. The allegations
4 of this complaint stated on information and belief are likely to have evidentiary support after a
5 reasonable opportunity for further investigation or discovery.

6 **NATURE OF THE CASE**

7 2. This case seeks to prevent the County of Santa Barbara ("County"), through the Santa
8 Barbara County Board of Supervisors ("Board") and Joan Hartmann, Das Williams, Janet Wolf,
9 Peter Adam, and Steve Lavagnino in their official capacity as Supervisors of the County of Santa
10 Barbara ("Supervisors") (collectively "Defendants") from destroying the Santa Ynez Valley
11 ("Valley"). In 2009, after nine years of significant effort by the County and many impacted
12 residents, the County adopted the Santa Ynez Valley Community Plan ("Community Plan"). The
13 Community Plan was developed to preserve the Valley's rural character, protect agricultural land,
14 and limit urban development. It therefore limited urban development to narrow areas around Santa
15 Ynez, Los Olivos, and Ballard. When adopted, the Community Plan became the guide for all
16 development in the Valley and constrained what individuals can develop and what developments the
17 County can approve, either directly or through a settlement agreement. The County is, put simply,
18 not allowed to approve any developments that do not comply with the Community Plan.

19 3. The County is now, however, on the verge of ignoring its legal obligations, the
20 interests of the vast majority of the Valley community, and the significant effort that went into
21 developing the Community Plan. On October 31, 2017, Defendants intend to vote on and enter an
22 agreement ("Agreement") with the Santa Ynez Band of Chumash Indians ("Band"). The Agreement
23 will allow the Band to convert 1,400 acres of agricultural land at the corner of state routes 154 and
24 246 (known as "Camp 4") into an urban development of 143 residences and 30 acres of tribal
25 facilities, including a 12,000 square foot community center, that will attract 415 new residents and
26 800 additional visitors per weekend to 100 "special" events hosted each year.

27 4. Defendants have admitted repeatedly what cannot be denied—the development does
28 not comply with the Community Plan. The Agreement therefore, *a fortiori*, cannot comply with the

Community Plan. These admissions, supported by the facts, prove that Defendants lack authority to enter the contemplated agreement.

5. The Government Code, specific requirements in the Community Plan, and the California Environmental Quality Act protect Plaintiff and the Valley community from such attempts by Defendants to abdicate their responsibilities. Plaintiff therefore requests that the Court declare that Defendants lack authority to enter the agreement and enjoin Defendants from voting on or entering the agreement.

PARTIES

6. Plaintiff, San Lucas Ranch, LLC is a California limited liability company.

7. Defendant, County of Santa Barbara is a political subdivision of the State of California.

8. Defendant Santa Barbara County Board of Supervisors administers and directs the business of the County.

9. Defendant Joan Hartmann, an individual, is the Chair of the Board of Supervisors.

10. Defendant Das Williams, an individual, is the Vice Chair of the Board of Supervisors.

11. Defendant Janet Wolf, an individual, is a Member of the Board of Supervisors.

12. Defendant Peter Adam, an individual, is a Member of the Board of Supervisors.

13. Defendant Steve Lavagnino, an individual, is a Member of the Board of Supervisors.

14. Plaintiff does not know the true names of defendants DOES 1-30, inclusive. Plaintiff therefore sues these defendants by those fictitious names. Plaintiff will ask leave of Court to amend this complaint and insert the true names and capacities of said defendants when the same have been ascertained. Plaintiff is informed and believes, and based thereon alleges, that each of the defendants designated herein as a "DOE" is legally responsible in some manner for the events and happenings herein alleged, and that Plaintiff's damages as alleged herein were proximately caused by such defendants.

JURISDICTION AND VENUE

15. All parties hereto are within the unlimited jurisdiction of this Court. The unlawful acts complained of occurred in Santa Barbara County. Venue in this Court is proper.

GENERAL ALLEGATIONS

16. Plaintiff and its wholly owned subsidiary Holy Cow Performance Horses, LLC, owns approximately 9,100 acres of scenic agricultural land in Santa Ynez called San Lucas Ranch ("Ranch"). The Ranch is adjacent (south and southwest) to Camp 4, separated only by a small rural road. Plaintiff is, in turn, wholly owned by the Anne Vickers Crawford-Hall Revocable Trust.

17. The Crawford family purchased the Ranch in 1924. At the time, the property included Camp 4 and measured over 10,000 acres located on either side of state route 154 south of route 246 and northeast of 154 after it crosses 246. The Ranch—including Camp 4—was a working cattle ranch and farm. The children of the original Crawford owners split the property upon inheritance, with one brother taking the portion that contains the Ranch and the other taking the portion that contains Camp 4. The Camp 4 portion was subsequently sold out of the family and eventually to the Band.

18. The Ranch is still used primarily for grazing and includes a horse breeding facility, cattle ranching operations, and crops and range land. The land provides unique grazing, farming and ranching resources, wildlife, wildlife habitat, and open space. Plaintiff recognizes the responsibility that comes with owning such a vital piece of property and has therefore subjected significant parts of the Ranch to conservation easements that restrict development and limit its use to low intensity agriculture consistent with environmental considerations. Plaintiff similarly never allows hunting or fishing on the property. Recognizing the impact development in the Valley would have on the community, the environment, and the Ranch, Plaintiff participated actively in developing the Community Plan, described in more detail below.

19. Construction of 143 residences and a government center adjacent to the Ranch will significantly undermine the care with which Plaintiff has stewarded the Ranch. The additional residents and uses will deplete the local water supply on which Plaintiff depends for raising horses and cows and growing crops. Similarly, water used on Camp 4 will drain into and pollute the Ranch thereby affecting cattle, horses and other wildlife. The paving of roads and parking lots on Camp 4 will amplify the amount of water run-off. The development will also increase traffic, noise, trespassing, property destruction, pollution, fire hazards and general nuisances. The proposed

development will further threaten environmental resources Plaintiff has devoted much of its property to protecting, such as the Vernal Pool Fairy Shrimp, steel head trout, red-legged frogs, Least Bells Vireos, and Thompson's Bats.

20. Because of the impact development of Camp 4 will have on the Ranch, Plaintiff actively opposed the Band's attempts to put Camp 4 into trust and has a lawsuit pending in the Central District of California to overturn the Bureau of Indian Affair's decision to put the land into trust. The terms of the Agreement will, as described below, vitiate many of Plaintiff's arguments; arguments with which the County agrees.

The Community Plan Protects Agricultural Land, Limits Urban Development, and Constrains the Types of Development Defendants Can Approve

21. Santa Barbara, as required by law, has a long-term general plan that outlines development in the county (the "General Plan"). The General Plan expresses the community's development goals and embodies public policy. The General Plan also includes a specific plan for the Valley—the Community Plan.[1] The Community Plan supplements and must be consistent with the policies of the General Plan. When the Board of Supervisors adopted the Community Plan on October 6, 2009, it became the binding guide for future development in the Valley.

22. The County developed the Community Plan in response to concerns about the changing character of the Valley, including: preserving the viability of agriculture amidst continuing subdivision of larger agricultural parcels into ranchettes, increasing traffic, insufficient infrastructure, and the impact of tourism.

23. The Community Plan took approximately nine years to develop and involved a concerted long-range effort by the community and the County that included targeted research, data collection and analysis, extensive public involvement, the drafting of goals, policies, and development standards, and numerous public hearings with the Planning Commission and the Board of Supervisors. More than 75 individuals and entities also participated. The Planning Commission

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[1] *See* http://longrange.sbcountyplanning.org/planareas/santaynez/documents/Board%20of%20Supervisors%20Adoption/Electronic%20Docket/Master%20Final%2010-15-09.pdf

1 had numerous public meetings and directed staff to revisit numerous aspects of the proposed plan.
2 An Environment Impact Report[2], spanning more than 2,000 pages with appendices, was also
3 prepared and the studied alternatives revised numerous times. Through this detailed process, the
4 Community Plan came to "reflect the prevailing visions and objectives of the area's residents."
5 24. The Community Plan includes goals and objectives on how the Valley should be
6 developed, policies to implement those goals, and certain actions to achieves the goals and policies.
7 One of its primary goals is to maintain the Valley's rural character and agricultural tradition while
8 accommodating some well-planned growth within township boundaries that is compatible with
9 surrounding uses. To implement this goal, the County must preserve agricultural land, distinguish
10 urban and rural areas, and consider the impact of any project on natural resources.
11 25. Distinguishing between agricultural and developed land was crucial to maintaining
12 the County's agricultural character. Agriculture depends on having similar surrounding agricultural
13 uses, which provides the infrastructure (e.g., feed lots, feed stores, cattle auctions) necessary for
14 agricultural lands to thrive. When land in agricultural areas is developed, the infrastructure is lost
15 and the remaining ranches viability is threatened.
16 26. To further preserve the Valley's character and agricultural heritage, the County must
17 oppose any loss of jurisdiction over land unless it has a "satisfactory legally enforceable agreement"
18 that requires use that is consistent "with the goals, policies and development standards" of the
19 Community Plan.
20 **As Defendants Repeatedly Admit, the Camp 4**
21 **Development Does Not Comply with the Community Plan**
22 27. Camp 4 is located along the northeast side of the intersection of routes 154 and 246 in
23 the Valley. It comprises over 1,400 acres of agricultural land, an area almost as large as Solvang and
24 larger than the most populous city in the Valley. Per the Community Plan, it must "be preserved and
25 protected" as agricultural land and not become an urban development. It is also in the designated
26 "Rural Area," which requires that lots measure no fewer than 100 acres.
27
28

[2] *See* http://longrange.sbcountyplanning.org/planareas/santaynez/sy_EIR.php

1 28. On June 27, 2013, the Band applied with the Bureau of Indian Affairs ("BIA") to take
2 Camp 4 into "trust." By taking the land into trust, the Band would be able to avoid all County
3 regulations, including the Community Plan, and would not have to pay taxes on the property.
4 29. As part of the process, the Band submitted a Final Environmental Assessment ("EA")
5 that described potential ways the land might be used. One of the uses is identified as "Alternative
6 B" and is incorporated by reference into the Agreement. This alternative converts more than 85% of
7 Camp 4 into non-agricultural uses (residential subdivisions, tribal facilities, non-agricultural open
8 space, riparian corridors). The "Alternative B" development is hereinafter referred to as the
9 "Development."
10 30. The residential subdivisions will have 143 one-acre properties (1/100th the size
11 mandated by the Community Plan). The tribal facilities include a community center and banquet
12 hall/exhibit facility, office complex, and tribal community space. The community center will be
13 12,000 square feet with 250 parking spaces and will host 100 special events per year with up to 400
14 attendees per event.
15 31. Between October 2013 and January 2017, Defendants explained repeatedly and
16 consistently that the Development conflicts with the Community Plan. They provided these
17 explanations to the BIA through the County's executive officer and to the Central District of
18 California through County counsel. Nothing has changed between when the County provided those
19 explanations and today that alter their validity or accuracy. As most pertinent to the instant
20 application, Defendants explained that:
21 a. The Development is "incompatible" with the Community Plan and conflicts with
22 many of its policies
23 b. The Development violates resource adequacy requirements and adversely impacts
24 land use, regulatory requirements, and public health and safety concerns.
25 c. The community lacks resources necessary to support the Development.
26 d. The Development is an impermissible urban development in a rural area.
27 e. No analysis has studied the impact the massive conversion of agricultural land will
28 have on neighboring agricultural land.

f. The Development is incompatible with surrounding uses.

g. The mitigation measures do not "provide adequate protection."

Defendants Impermissibly Intend to Allow the Band to Build a Development that is Incompatible with the Community Plan

32. In 2015, Defendants established an *ad hoc* subcommittee to engage with the Band regarding Camp 4. Defendants initially met in public sessions but held only close-door meetings with the Band between October 2016 and September 2017. They announced the broad contours of the Agreement on September 25, 2017 and published the actual agreement on September 28, 2017. Public meetings before the *ad hoc* subcommittee were held on October 5, 2017 and October 9, 2017. Defendants made no changes to the Agreement based on the comments received and intend to have the entire Board vote to approve the Agreement on October 31, 2017.

33. Among other things, the Agreement allows the Band to develop the property based on one of the alternatives that Defendants told the BIA and federal court was "incompatible" with the Community Plan and to implement mitigation measures that Defendants had found to be insufficient. It also requires the County to dismiss its lawsuit against the BIA and to ask Congress to pass a bill "expeditiously" that will effectively end other lawsuits challenging the transfer of the land, including Plaintiff's. In return, the County will receive a mere $178,000/year from the Band, a fraction of what the additional services required to accommodate more than 400 new residents and up to 800 additional visitors per weekend will cost.

34. Examples of the myriad ways in which the Agreement violates the Community Plan include:

a. The Agreement Does Not Protect Agricultural Land. The Agreement allows the Band to convert 1,227 acres of agricultural land into other uses, violating the directive that agricultural land "shall" be preserved and protected for agricultural use. "Shall," as used in the Community Plan, is "an unequivocal directive." Defendants have no leeway; they must oppose anything that contradicts this directive. Defendants therefore cannot approve such a drastic decrease in agricultural land.

b. The Agreement Impermissibly Expands Urban Development. Per the Community

Plan, the County "shall" limit urban development to the Santa Ynez, Los Olivos, and Ballard urban boundaries, which "shall" be the limits of urban development, and which "shall not" be extended except as part of an update of the Community Plan. Camp 4 is beyond those urban limits and the Development is an "urban" development. This further confirms that the Agreement is incompatible with the Community Plan and therefore cannot be signed.

c. The Agreement Spoils the Valley's Character. The Community Plan seeks to maintain the Valley's rural character and agricultural tradition. But the Development, at the crossroads of state routes 154 and 246, will construct 143 residences on one-acre lots (1/100th the required size), create 30 acres of tribal facilities, including a 12,000 square foot community center that will host 100 "special" events per year, a banquet hall/exhibit facility, office complex, and tribal community space, and bring at least 415 new residents, more than 40 employees, and 800 additional visitors per weekend to this rural area. These changes (1) threaten requirements imposed to protect the environment and community and (2) impact public health and safety concerns, such as groundwater and water resources, demand for public safety services, air quality, and traffic control. The only reliable analysis performed to date determined that the area lacks resources to support this type of development.

d. The Agreement obstructs the goals of the Community Plan by ignoring resource adequacy requirements.

35. To approve such a non-compliant development, Defendants must first go through the detailed, statutorily required amendment process. The process guarantees the public a meaningful role. The Planning Commission, not just the Board, must consider the proposed amendment. Commission staff must analyze the effect of the changes on all other elements of the General Plan. Staff must notify impacted individuals, groups, and agencies so that it can receive relevant and informed advice and recommendations. The Commission must hold at least one noticed public hearing and make a recommendation approved by at least half of its members. The Board must also hold independent hearings after receiving the Planning Commission's recommendations.

36. An amendment is also a "project" for CEQA purposes and therefore must consider whether an environmental impact report is required. Defendants' numerous admissions about the impacts the Development will have on the community and environment establish that an Environmental Impact Report will be required before Defendants can approve the Agreement.

37. Defendants are also not authorized to enter the Agreement pursuant to the Community Plan's directive that the County may negotiate satisfactory legally enforceable agreements. Any such agreements must effectuate the goals and objectives of the General and Community Plans, and the County admits the Agreement does not do so.

38. Permissible agreements must (1) be enforceable, (2) be satisfactory, (3) be consistent with the Community Plan, (4) encourage compatibility with the surrounding area, and (5) mitigate environmental and financial impacts. The Agreement satisfies none of these requirements. By way of example:

39. Defendants have admitted repeatedly that the Development is incompatible with the Community Plan and surrounding area.

40. Defendants have also stated that the Agreement's mitigation measures do not provide adequate protection. Specifically, they do not sufficiently minimize or avoid impacts to land resources, water resources, air quality, biological resources, or public services. Proving the illusory nature of the mitigation measures, as Defendants have explained, they generally only refer vaguely to "Best Management Practices" and provide no data regarding their effectiveness or ability to mitigate any impacts. Without this type of information, Defendants cannot claim that the Agreement mitigates environmental impacts.

41. The agreement does not mitigate financial impacts. The $178,000 per year the Band will provide is insufficient to offset the additional services the County will have to provide.

42. The Agreement is not a "satisfactory legally enforceable agreement." The Agreement is really a "Memorandum of Understanding" because it provides insufficient specificity for the County to know what it is agreeing to or to hold the Band accountable. For example, the Agreement does not identify where the Band will build the houses. The Band is therefore free to develop areas that impact the community in ways the County has not considered. This level of vagueness and

1 ambiguity permeates the entire Agreement, rendering it unsatisfactory and raising significant
2 concerns about its enforceability.

3 43. As another example, the residences will purportedly comply with descriptions in
4 "Alternative B" as referenced on specified pages of the EA. But those pages do not describe the
5 residences. Defendants believe the residences will comply with the vague description of residences
6 included for a different alternative considered in the EA, but nothing in the Agreement confirms that
7 belief. If it is true, then some, but not all, characteristics of a different alternative are incorporated
8 into the Agreement. Defendants have no way of knowing which characteristics the Band agrees are
9 incorporated and no method to enforce its expectation.

10 44. Similarly, the Agreement states that the Band need only pay the County
11 $178,000/year. These payments are described as the approximate offsets to the potential losses and
12 impacts to the County. Defendants expect, however, to receive additional payments listed in the
13 FONSI's mitigation plan. The Agreement says nothing about the Band having to make these
14 additional payments and, to the contrary, says that beyond the $178,000, any impacts to the County
15 "will be mitigated solely by the County at no additional cost to the Band for the term of this
16 Agreement."

17 45. Most glaringly, the Band is not precluded from voiding the Agreement by arguing
18 that Defendants acted *ultra vires*. While Plaintiff disputes that Defendants achieved any benefits
19 through this Agreement, any benefits Defendants claim to have achieved are illusory given the
20 Band's ability to void the Agreement.

21 **FIRST CAUSE OF ACTION**

22 **(DECLARATORY RELIEF)**

23 46. Plaintiff realleges and incorporates by reference all the allegations above, as though
24 fully set forth.

25 47. An actual controversy has arisen and now exists between Plaintiff and Defendants
26 concerning their respective rights and duties in that Defendants believe that they have authority to
27 enter into the Agreement and Plaintiff contends that Defendants lack such authority. A judicial
28 declaration is necessary and appropriate at this time under the circumstances in order that Plaintiff

and Defendants may ascertain their rights and duties as alleged herein.

48. Defendants intend to vote on and enter the Agreement on October 31, 2017. Defendants can, however, only enter agreements that the they are authorized to enter. Defendants are not authorized to enter any agreement that allows a project, such as the Development, that does not comply with the Community Plan. The Development does not comply with the Community Plan because, for instance, it does not protect agricultural land, it expands urban development and allows urban development to encroach on agricultural land, it spoils the Valley's character, it ignores resource adequacy requirements, and it is not a legally enforceable agreement that encourages compatibility with the community and mitigates environmental and financial impacts to the county. Defendants are therefore precluded from entering the Agreement without amending the Community Plan, a process that, through, *e.g.*, guaranteed community involvement and compliance with CEQA, protects the community from Defendants abdicating their responsibilities.

49. Plaintiff will be harmed by Defendants entering the Agreement because, at a minimum:

- Defendants will have entered an agreement that they lacked authority to enter and that will have significant impacts on the community in which Plaintiff is located;
- Camp 4 will be developed in non-compliance with the Community Plan on which Plaintiff worked actively to preserve the community and to protect the community and its property from the impacts of developments like Camp 4;
- The Agreement will adversely impact Plaintiff's community in numerous ways, including the environment, public health and safety, groundwater and surface water, local flora and fauna, and traffic control.
- The Agreement will allow urban development to encroach on agricultural land, which will adversely impact the community and Plaintiff's land, including by impacting environmental resources such as the Vernal Pool Fairy Shrimp, steel head trout, red-legged frogs, Least Bells Vireos, and Thompson's Bats, water resources on which Plaintiff relies to raise cattle and horses and to grow crops sustainably to be used as feed for the cattle and horses, pollution of surface water

that flows from Camp 4 across Plaintiff's property, and decreasing farming and crop productivity.

50. Therefore, Plaintiff requests a declaration of the rights of the parties, including a declaration that Defendants lack authority to enter into the Agreement. Plaintiff additionally requests ancillary relief, including but not limited to preliminary and permanent injunctions, prohibiting Defendants from voting on or entering the Agreement.

SECOND CAUSE OF ACTION

(INJUNCTIVE RELIEF)

51. Plaintiff realleges and incorporates by reference all the allegations above, as though fully set forth.

52. Defendants intends to vote on and enter the Agreement on October 31, 2017. Defendants can, however, only enter agreements that they are authorized to enter. Defendants are not authorized to enter any agreement that allows a project, such as the Development, that does not comply with the Community Plan. The Development does not comply with the Community Plan because, for instance, it does not protect agricultural land, it expands urban development and allows urban development to encroach on agricultural land, it spoils the Valley's character, and it ignores resource adequacy requirements, and it is not a legally enforceable agreement that encourages compatibility with the community and mitigates environmental and financial impacts to the county. Defendants are therefore precluded from entering the Agreement without amending the Community Plan, a process that, through, *e.g.*, guaranteed community involvement and compliance with CEQA, protects the community from Defendants abdicating their responsibilities.

53. Plaintiff will be harmed by Defendants voting on and entering the Agreement because, at a minimum:

- Defendants will have entered an agreement that they lacked authority to enter and that will have significant impacts on the community in which Plaintiff is located;
- Camp 4 will be developed in non-compliance with the Community Plan on which Plaintiff worked actively to preserve the community and to protect the community and its property from the impacts of developments like Camp 4;

- The Agreement will adversely impact Plaintiff's community in numerous ways, including the environment, public health and safety, groundwater and surface water, local flora and fauna, and traffic control.
- The Agreement will allow urban development to encroach on agricultural land, which will adversely impact the community and Plaintiff's land, including by impacting environmental resources such as the Vernal Pool Fairy Shrimp, steel head trout, red-legged frogs, Least Bells Vireos, and Thompson's Bats, water resources on which Plaintiff relies to raise cattle and horses and to grow crops sustainably to be used as feed for the cattle and horses, pollution of surface water that flows from Camp 4 across Plaintiff's property, and decreasing farming and crop productivity.

54. Plaintiff has no adequate or speedy remedy at law for the injuries that are threatened.

55. The harm to Plaintiff outweighs the harm to Defendants because Defendants will only be precluded from voting on and entering an agreement that they lack authority to enter, while the harm to Plaintiff and the Valley of Defendant entering the Agreement will be a fundamental change to the Valley's character with attendant environmental and economic impacts to the Valley and Plaintiff's property.

56. Granting injunctive relief will not contravene the public interest.

57. Therefore, Plaintiff requests an order enjoining Defendants from voting on or entering into the Agreement.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

1. For a declaration that Defendants lack authority to enter the Agreement.

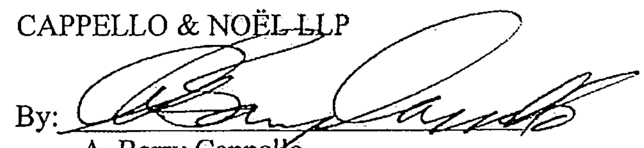
2. For preliminary and permanent injunctive relief enjoining Defendants, their officials, representatives and agents, and each of them, from voting on and entering the Agreement.

3. For an award of Plaintiff's attorneys' fees, costs, and prejudgment interest pursuant to Cal. Code of Civ. Procedure § 1021.5 and other applicable law; and

4. For such other relief as the Court deems just and proper.

DATED: October 24, 2017

CAPPELLO & NOËL LLP



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By: Terri Chavez, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA BARBARA

SAN LUCAS RANCH, LLC, a California Limited Liability Company,

Plaintiff,

vs.

COUNTY OF SANTA BARBARA; SANTA BARBARA COUNTY BOARD OF SUPERVISORS; JOAN HARTMANN, DAS WILLIAMS, JANET WOLF, PETER ADAM, STEVE LAVAGNINO IN THEIR OFFICIAL CAPACITY AS SUPERVISORS OF THE COUNTY OF SANTA BARBARA; and DOES 1-30, inclusive,

Defendant.

Case No.: 17CV04794

PLAINTIFF'S *EX PARTE* APPLICATION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE RE PRELIMINARY INJUNCTION TO ENJOIN DEFENDANTS FROM APPROVING INCOMPATIBLE LAND USE; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

Date: October 26, 2017
Time: 8:30 a.m.
Dept: 4

Complaint filed on October 24, 2017

Assigned to the Honorable Donna D. Geck

APPLICATION

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

Plaintiff San Lucas Ranch, LLC ("Plaintiff") applies for a temporary restraining order and an order to show cause why a preliminary injunction should not be granted enjoining the County of Santa Barbara ("County"), the Santa Barbara County Board of Supervisors ("Board"), and Joan Hartmann, Das Williams, Janet Wolf, Peter Adam, and Steve Lavagnino in their official capacity as Supervisors of the County of Santa Barbara ("Supervisors"), (collectively "Defendants") from entering an agreement ("Agreement") that will allow real property in the Santa Ynez Valley commonly referred to as Camp 4 to be developed in a manner that is incompatible with the Santa Ynez Community Plan ("Community Plan").

This application needs to be heard on an *ex parte* basis because Defendants have stated their intent to vote on the Agreement on October 31, 2017. Hearing the application *ex parte* will avoid prejudice and irreparable harm, because if Plaintiff is required to provide statutory notice for this motion, Defendants will proceed with the vote, thereby setting into motion actions that cannot be unwound. If this action determines that Defendants lack authority to enter the Agreement, then Defendants will not vote on the Agreement and then can either negotiate a new agreement, take the steps necessary to attempt to amend the Community Plan as required by law, or take a different approach to addressing this development. This application thus seeks *ex parte* relief to restrain and enjoin the vote prior to a full hearing on an order to show cause.

The Community Plan governs what projects can be developed in the Valley. Defendants cannot enter any agreement that allows a project that does not comply with the Community Plan. The law is simple. If the contemplated project does not comply with the plan Defendants cannot agree to it. This still leaves Defendants with alternatives. They can seek to amend the Community Plan, a statutorily required process that protects the community through guaranteed citizen involvement and compliance with the California Environmental Quality Act. What they cannot do, though, is circumvent the applicable laws and regulations.

Defendants' intent to act *ultra vires* takes on added urgency here. The Agreement involves the 1,427 acres of land at the corner of state routes 154 and 246 that the Santa Ynez Band of

Chumash Indians ("Band") is trying to "put into trust," *i.e.*, remove from the County's jurisdiction. *See* Ex. 1 at 6-19. Once signed, the Agreement requires the County (1) to dismiss its federal lawsuit that opposes putting the land into trust and seeks to enforce environmental regulations and (2) to give Congress the local imprimatur it has been awaiting to pass legislation that will vitiate Plaintiff's own lawsuit regarding the impropriety of taking this land into trust. Should the Court subsequently determine that Defendants acted *ultra vires*, the Court will lack authority to reinstate the federal lawsuit or to compel Congress to undo its vote on the bill. The agreement will be void and the County will have lost jurisdiction over the land. A more harmful result is hard to imagine.

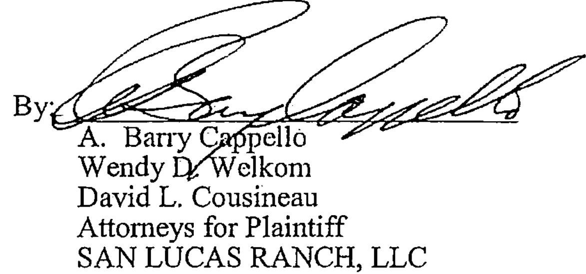
Plaintiff is therefore entitled to a temporary restraining order and preliminary injunction to avoid irreparable harm and it is reasonably likely that Plaintiff will prevail on the merits. There is no other meaningful, timely remedy at law to protect its interests and the interests of other members of the community. Plaintiff has not previously applied to any judicial officer for similar relief.

The County is represented by Amber Holderness, County Counsel, 105 East Anapamu Street, Suite 201, Santa Barbara, CA 93101 (805-568-2950); aholderness@co.santa-barbara.ca.us.

This application is based on the complaint filed on October 24, 2017, the accompanying declarations of Anne (Nancy) Crawford-Hall and David L. Cousineau, the concurrently filed memorandum of points and authorities and supporting request for judicial notice and exhibits, and on any other evidence that may be presented or received at any hearing of the application.

DATED: October 25, 2017

CAPPELLO & NOËL LLP



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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 The County of Santa Barbara ("County") cannot, through its representatives, violate
3 governing laws and regulations. When it does, it acts without authority and courts become the
4 citizens' last resort to constrain its *ultra vires* actions. Here, court intervention is necessary to
5 prevent Defendants from violating the California Government Code and the Santa Ynez Valley
6 Community Development Plan ("Community Plan") by authorizing a project Defendants admit is
7 incompatible with the Community Plan and adversely impacts the Santa Ynez Valley ("Valley").

8 The Community Plan governs what projects can be developed in the Valley. Defendants
9 cannot enter any agreement that allows a project that does not comply with the Community Plan.
10 The law is simple. If the contemplated project does not comply with the plan Defendants cannot
11 agree to it. This still leaves Defendants with alternatives. They can seek to amend the Community
12 Plan, a statutorily required process that protects the community through guaranteed citizen
13 involvement and compliance with the California Environmental Quality Act. What they cannot do,
14 though, is circumvent the applicable laws and regulations.

15 Defendants' intent to act *ultra vires* takes on added urgency here. The agreement at issue
16 ("Agreement") involves the 1,427 acres of land at the corner of state routes 154 and 246 that the
17 Santa Ynez Band of Chumash Indians ("Band") is trying to "put into trust," *i.e.*, remove from the
18 County's jurisdiction. *See* Ex. 1 at 6-19. Once signed, the Agreement requires the County (1) to
19 dismiss its federal lawsuit that opposes putting the land into trust and seeks to enforce environmental
20 regulations and (2) to give Congress the local imprimatur it has been awaiting to pass legislation that
21 will vitiate Plaintiff's own lawsuit regarding the impropriety of taking this land into trust. Should
22 the Court subsequently determine that Defendants acted *ultra vires*, the Court will lack authority to
23 reinstate the federal lawsuit or to compel Congress to undo its vote on the bill. The agreement will
24 be void and the County will have lost jurisdiction over the land. A more harmful result is hard to
25 imagine.

26 Defendants intend to vote on the agreement on October 31, 2017. They should be enjoined
27 from voting until their authority to enter the Agreement has been fully adjudicated.

28

1 STATEMENT OF FACTS

2 **I. The Proposed Development Will Significantly Impact Plaintiff's Property**

3 Plaintiff San Lucas Ranch, LLC ("Plaintiff"), and its wholly owned subsidiary Holy Cow
4 Performance Horses, LLC, owns approximately 9,100 acres of scenic agricultural land in Santa Ynez
5 called San Lucas Ranch ("Ranch"). Declaration of Anne (Nancy) Crawford Hall at ¶¶ 5, 11. The
6 Ranch is adjacent (south and southwest) to Camp 4, separated only by a small rural road. *Id.* at ¶ 5.
7 The Crawford family purchased the Ranch in 1924. *Id.* at ¶ 3. At the time, it included Camp
8 4 and measured over 10,000 acres located on either side of state route 154 south of route 246 and
9 northeast of 154 after it crosses 246. The Ranch—including Camp 4—was a working cattle ranch
10 and farm. *Id.* The children of the original Crawford owners split the property upon inheritance, with
11 one taking the part that contains the Ranch and the other taking the part that contains Camp 4. The
12 Camp 4 portion was later sold out of the family and eventually to the Band. *Id.* at ¶ 4.
13 The Ranch is still used primarily for grazing and includes a horse breeding facility, cattle
14 ranching operations, and crops and range land. *Id.* at ¶ 6. The land provides unique grazing,
15 farming and ranching resources, wildlife, wildlife habitat, and open space. *Id.* Plaintiff recognizes
16 the responsibility that comes with owning such a vital piece of property and has therefore subjected
17 significant parts of the Ranch to conservation easements that restrict development and limit its use to
18 low intensity agriculture consistent with environmental considerations. *Id.* at ¶ 7. Plaintiff similarly
19 never allows hunting or fishing on the property. *Id.* at ¶ 8. Recognizing the impact development in
20 the Valley would have on the community, the environment, and the Ranch, Plaintiff participated
21 actively in developing the Community Plan, described in more detail below. *Id.* at ¶ 10.
22 The proposed development will significantly undermine the care with which Plaintiff has
23 stewarded the Ranch. *Id.* at ¶¶ 13, 17-43. The additional residents and uses will deplete the local
24 water supply on which Plaintiff depends for raising horses and cows and growing crops. *Id.* at ¶¶ 23,
25 26. Similarly, water used on Camp 4 will drain into and pollute the Ranch thereby affecting cattle,
26 horses and other wildlife. *Id.* at ¶ 26. The paving of roads and parking lots on Camp 4 will amplify
27 the amount of water run-off. *Id.* at ¶ 30. The development will also increase traffic, noise,
28 trespassing, property destruction, pollution, fire hazards and general nuisances. *Id.* at ¶ 27. The

1 proposed development will further threaten environmental resources Plaintiff has devoted much of
2 its property to protecting, such as the Vernal Pool Fairy Shrimp, steel head trout, red-legged frogs,
3 Least Bells Vireos, and Thompson's Bats. *Id.* at ¶ 30.
4 Because of the impact this development will have on the Ranch, Plaintiff opposed the Band's
5 attempts to put Camp 4 into trust and has a lawsuit pending in the Central District of California to
6 overturn the Bureau of Indian Affair's decision to approve the transfer. The Agreement will, as
7 described below, vitiate many of Plaintiff's arguments; arguments with which the County agrees.

8 **II. The Community Plan Limits the Types of Developments the County Can Approve**

9 Santa Barbara, as required by law, has a long-term general plan that outlines development in
10 the county (the "General Plan").[1] The General Plan expresses the community's development goals
11 and embodies public policy. *Ibid.* The General Plan also includes a specific plan for the Valley—
12 the Community Plan. *Ibid.* The Community Plan supplements and must be consistent with the
13 policies of the General Plan. *Ibid.* When the Board of Supervisors adopted the Community Plan on
14 October 6, 2009, it became the binding guide for future development in the Valley. Ex. 3 at 3.

15 **A. The Community Plan was Developed to Preserve the Valley's Rural Character**

16 The County developed the Community Plan in response to concerns about the changing
17 character of the Valley, including: preserving agriculture amidst subdivision of larger agricultural
18 parcels, increasing traffic, insufficient infrastructure, and the impact of tourism. Ex. 3 at 2. The
19 importance of the Valley's character is emphasized on the plan's very first page:

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> The oak-studded Santa Ynez Valley, nestled between two towering mountain ranges in central Santa Barbara County, boasts an enviable quality of life for its residents. Still-friendly small towns with unique individual character are linked by scenic rural roads featuring bucolic views of farms, ranches and pristine natural areas. The local economy is strong, anchored by thriving agriculture and tourism industries. Residents enjoy an unhurried pace of life, night skies still dark enough for stargazing, clean air, ample recreational opportunities and abundant natural resources. The rural charm, comfort and beauty of the Valley, that has remained relatively unchanged for so long, stands in stark contrast to the "Anytown USA" atmosphere that has engulfed many communities across California and the rest of the Country.

[1] SB County Guide to the Comprehensive Plan (http://longrange.sbcountyplanning.org/about_landuse.php)

Ex. 3 at Overview; Ex. 3 at 1 (County stressing the Valley's character).

B. The Community Plan Results from Nine Years of Significant Effort, Research, and Community Input

The Community Plan took approximately nine years to develop and involved a concerted long-range effort by the community and the County that included targeted research, data collection and analysis, extensive public involvement, the drafting of goals, policies, and development standards, and numerous public hearings with the Planning Commission and the Board of Supervisors. *See* Ex. 3 at 5, 7. More than 75 individuals and entities participated. *See id.* at Acknowledgments & App. J. The Planning Commission had numerous public meetings and directed staff to revisit numerous aspects of the proposed plan. *See generally id.* at 5-8. An Environmental Impact Report, spanning more than 2,000 pages with appendices, was also prepared and the studied alternatives revised numerous times. *See id.* at 8.[2] Through this detailed process, the Community Plan came to "reflect the prevailing visions and objectives of the area's residents." *Id.* at 2.

C. The Community Plan Protects Agricultural Land and Prevents Urban Sprawl

The Community Plan includes goals and objectives on how the Valley should be developed, policies to implement those goals, and certain actions to achieves the goals and policies. *See id* at 4. One of its primary goals is to "Maintain the [Valley's] rural character and agricultural tradition while accommodating some well-planned growth within township boundaries that is compatible with surrounding uses." *Id.* at 22. To implement this goal, Defendants must preserve agricultural land, distinguish urban and rural areas, and consider the impact of any project on natural resources. *See, e.g., id.* at 8-10, 22-23, 73. By way of illustration, it requires:

> **Policy LUA-SYV-2:** "Land designated for agriculture . . . shall be preserved and protected for agricultural use." *Id.* at 73; *See also id.* at 8, 10, 73.
>
> **Land Use:** "residential development should not be located on prime food producing or pasture land, but close to existing public services. The beauty of the land should be preserved by limiting urban sprawl. . . ." *Id.* at 8; *see also id.* at 22.

[2] *See also* Santa Ynez Valley Community Plan Environmental Impact Report page (http://longrange.sbcountyplanning.org/planareas/santaynez/sy_EIR.php).

> **Environment:** "Environmental constraints on development shall be respected. Economic and population growth shall proceed at a rate that can be sustained by available resources." *Id.* at 9; *see also id.* at 10, 75-198.

Distinguishing between agricultural and developed land was crucial to maintaining the County's agricultural character. Agriculture depends on having similar surrounding agricultural uses, which provides the infrastructure (*e.g.*, feed lots, feed stores, cattle auctions) necessary for agricultural lands to thrive. When land in agricultural areas is developed, the infrastructure is lost and the remaining ranches viability is threatened. *See* Ex. 3 at 12.

To further preserve the Valley's character and heritage, Defendants must oppose any loss of jurisdiction over land unless they have a "satisfactory legally enforceable agreement" that is consistent "with the goals, policies and development standards" of the Community Plan. Ex. 3 at 22-23.

III. Defendants Oppose the Band's Incompatible Use of Camp 4

A. The Community Plan Limits Camp 4's 1,400 Acres to Agricultural Uses

Camp 4 is located along the northeast side of the intersection of routes 154 and 246. It comprises over 1,400 acres of agricultural land, an area almost as large as Solvang and larger than the most populous city in the Valley. Ex. 13 at 1. It must "be preserved and protected" as agricultural land. Ex. 3 at 10 (quoting General Plan), 73; Ex. 8 at 12. It is also in the "Rural Area," where lots must measure no fewer than 100 acres. *See* Ex. 4 at 3-59; Ex. 6 at 16.

B. The Development Converts 1,227 Acres to Non-Agricultural Uses

On June 27, 2013, the Band applied with the Bureau of Indian Affairs ("BIA") to take Camp 4 into "trust." By taking the land into trust, the Band would be able to avoid all County regulations, including the Community Plan, and would not have to pay taxes on the property.

As part of the process, the Band submitted a Final Environmental Assessment ("EA") that described potential ways the land might be used. One of the uses is identified as "Alternative B" and is the option incorporated by reference into the Agreement. *See* Ex. 1 at p. 13, ¶ 11;[3] Ex. 4. This

[3] The Agreement incorporates the EA, Alternative B as referenced on page 2-3, pages 2-12 to 2-16 and Table 2-2 on page 2-15 of the EA, and the BIA's Finding of No Significant Impact ("FONSI"). Ex. 1 at ¶ 11. The proposed Development on the terms incorporated into the Agreement is hereinafter referred to as the "Development".

alternative converts more than 85% of Camp 4 into non-agricultural uses (residential subdivisions, tribal facilities, non-agricultural open space, riparian corridors). *See* Ex. 8 at 16; Ex. 13 at 6.

The residential subdivisions will have 143 one-acre properties (1/100th the required size). The tribal facilities include a 12,000 foot community center with 250 parking spaces that will host 100 "special" events per year with up to 400 attendees per event. Ex. 13 at 2, 19.

C. Defendants Admit that the Development Conflicts with the Community Plan in Many Ways

Between October 2013 and January 2017, Defendants admitted repeatedly and consistently that the Development conflicts with the Community Plan. They provided these explanations to the BIA through the County's executive officer and to the Central District of California through County counsel. Nothing has changed since the County provided those explanations that alter their validity or accuracy. As most pertinent to the instant application, the County admitted that:

1. The Development is "incompatible" with the Community Plan and conflicts with many of its policies. *See, e.g.,* Ex. 7 at 3 ("The proposed development is incompatible with the County's General Plan, Santa Ynez Community Plan, and County land use regulations.") (emphasis in original); Ex. 13 at 6-7; Ex. 8 at 19.

2. The Development violates resource adequacy requirements and adversely impacts land use, regulatory requirements, and public health and safety concerns. *See, e.g.,* Ex. 10 at 13 (Development "bring[s] substantially more residents, employees and visitors to a largely agricultural area and change the land use on Camp 4," threatens requirements that protect environment and community, and impacts public health and safety.); Ex. 13 at 5, 7-8, Ex. 8 at 45-49; Ex. 9 at 13-22.

3. The community lacks resources to support the Development. *See, e.g.,* Ex. 13 at 5; Ex. 8 at 42 (no available information alters this conclusion); Ex. 10 at 19; Ex. 11 at 21.

4. The Development is an impermissible urban development in a rural area. *See, e.g.,* Ex. 11 at 8, 21; Ex. 9 at 9; Ex. 8 at 43; Ex. 11 at 12 (urban and agricultural areas distinguished to avoid transportation, water, habitat and air quality problems, conflicts that increase regulatory costs

and lead to trespass and vandalism, and conflicts that decrease farming and crop productivity).

*5. **No analysis has studied the impact the massive conversion of agricultural land will have on neighboring agricultural land.*** *See, e.g.*, Ex. 8 at 43; Ex. 10 at 13.

*6. **The Development is incompatible with surrounding uses.*** *See, e.g.,* Ex. 8 at 44; Ex. 6 at 16; Ex. 13 at 2, 6.

*7. **The mitigation measures do not "provide adequate protection."*** *See, e.g.*, Ex. 10 at 14-15; Ex. 13 at 12-14; Ex. 8 at 35-40; Ex. 9 at 25-27.

D. The Impact of the Development on the Valley is So Significant that the County Seeks a Temporary Restraining Order to Prevent the Development

The process of transferring land into trust through the BIA process includes review by the BIA, a Federal District Court, and a Federal Appeal Court. The BIA approved the transfer without preparing an Environmental Impact Report despite the significant impacts the Development would have on the community. Defendants promptly sued in federal court to correct this failure and sought a Temporary Restraining Order to prevent irreparable harm if the land was developed before the appeals were completed. *See* Exs. 12, 13. In both the Complaint and Temporary Restraining Order, Defendants re-emphasized the points it made in section II.C, above. The Band avoided a ruling on the requested TRO by representing that it would defer construction. Ex. 14. That case was then stayed and will be dismissed with prejudice if Defendants enter the Agreement.

IV. Defendants Capitulate to the Band's Incompatible Use of Camp 4

In 2015, Defendants established an *ad hoc* subcommittee to discuss Camp 4 with the Band. Defendants initially met in public sessions but held only close-door meetings with the Band between October 2016 and September 2017. It announced the broad contours of the Agreement on September 25, 2017 and published the actual agreement on September 28, 2017. Public meetings before the *ad hoc* subcommittee were held on October 5, 2017 and October 9, 2017. Defendants made no changes to the Agreement based on the comments received and intend to have the entire Board vote to approve and enter the Agreement on October 31, 2017.

The Agreement allows the Band to develop the property based on one of the alternatives that Defendants told the BIA and federal court was "incompatible" with the Community Plan and to

implement mitigation measures that Defendants had found to be insufficient. It also requires Defendants to dismiss their lawsuit against the BIA and to ask Congress to pass a bill "expeditiously" that will effectively end other lawsuits challenging the transfer of the land, including Plaintiff's. In return, the County will receive a mere $178,000/year from the Band, a fraction of what the additional services required to accommodate more than 400 new residents and up to 800 additional visitors per weekend will cost. See Ex. 1 at p. 6-7, ¶ 9(d); Ex. 8 at 5; Ex. 9 at 15; Ex. 13 at 2, 19.

ARGUMENT

Courts consider two main factors in deciding whether to issue a preliminary injunction, such as a temporary restraining order: (1) whether Plaintiff will suffer greater injury from denial of the injunction than Defendant will suffer if it is granted and (2) whether there is a reasonable probability that Plaintiff will prevail on the merits. *Robbins v. Superior Court* (1985) 38 Cal.3d 199, 206; *Shoemaker v. County of Los Angeles* (1995) 37 Cal.App.4th 618, 633. Here, both factors weigh in favor of granting the temporary restraining order, thereby maintaining the *status quo* until County's authority to enter the Agreement can be finally determined. Code Civ. Proc., § 527.

I. Plaintiff Will Suffer Greater Harm if a TRO Does Not Issue Because the Agreement Cannot be Undone if Defendants are Subsequently Determined to Have Acted *Ultra Vires*

Discretion to grant a temporary restraining order must be exercised in favor of the party most likely to be injured. *Robbins, supra*, 38 Cal.3d at 205. If denying a temporary restraining order would harm Plaintiff greatly and impose little harm on the County, it is an abuse of discretion not to issue the order. *Ibid.* Here, Plaintiff would be harmed significantly more than Defendants.

Not enjoining Defendants will significantly harm Plaintiff. Declaration of Anne (Nancy) Crawford Hall at ¶¶ 14-16. If Defendants are not enjoined from entering the Agreement and are then found to have acted beyond their authority, the Agreement will become wholly void and unenforceable. *Costa Mesa City Emps. Ass'n v. City of Costa Mesa* (2012) 209 Cal.App.4th 298, 310. But by then, the County will have dismissed its lawsuit against the BIA and informed Congress that it supports moving Camp 4 into trust and wants Congress to pass a bill doing so "expeditiously."

1 Ex. 1 at p. 9-10 ¶¶ 3, 7. Ex. 1. The bill, H.R. 1491, converts the BIA's decision into one made at the
2 direction of Congress. *See* Ex. 1 at p. 19-20, ¶ 20-23. Many of the problems in the BIA decision
3 that require reversing the decision, are not applicable to a Congressionally directed action (*e.g.*,
4 failure to perform EIR). This bill has so far stalled in Congress pending a local resolution.
5 Defendants acquiescence to the transfer will be the local imprimatur Congress has been awaiting and
6 will effectively vitiate all appeals, including Plaintiff's, and terminate judicial review of BIA's
7 refusal to consider "known negative impacts" that Defendants argued for four years precluded
8 putting the land into trust. *See* Ex. 12 at 12-14. These actions cannot be unwound after the County
9 signs the Agreement.

10 On the other hand, harm to Defendants is minimal because the requested TRO merely
11 preserves the status quo. If the Court grants the TRO and ultimately finds that Defendants have
12 authority to enter the Agreement, then they may do so, subject to the lawsuits they will face from its
13 citizens they disenfranchised. There is no rush to enter the Agreement. The EA, incorporated into
14 the Agreement, states that the Band will not develop the project until 2023. Ex. 7 at 2-9
15 (construction "would not begin until 2023), 4-8, Appx. O, Ch. 3.0 at 3-35, 3-40; Ex. 1 at p. 13, ¶ 11.
16 There can be no doubt that Congress will delay voting on H.R. 1491 if Defendants and Band make
17 such a request. After all, the local member of Congress has stated that this should be resolved
18 locally (Ex. 16) and the Band has emphasized that it is part of the community and wants to work
19 with the community. *See* Ex. 19.

20 **II. Defendants' Admissions Prove Plaintiff's Likelihood of Success**

21 Plaintiff need only show a *reasonable probability* of success. *Baypoint Mortgage v. Crest*
22 *Premium Real Estate etc. Trust* (1985) 168 Cal.App.3d 818, 824. An injunction should be granted
23 when it appears by the operative pleading that Plaintiff is entitled to the relief demanded. Code Civ.
24 Proc., § 526(a)(1); *Dingley v. Buckner* (1909) 11 Cal.App. 181, 183-84.

25 **A. Defendants Cannot Approve an Agreement that is Incompatible with the**
26 **Community Plan**

27 Any agreement Defendants enter that does not comply with the Community Plan is void and
28 unenforceable. *Foxen v. City Santa Barbara* (1913) 166 Cal. 77, 82 ("the acts of a municipal

1 corporation done *ultra vires* are absolutely void. . . ."); *Summit Media LLC v. City of Los Angeles*
2 (2012) 211 Cal.App.4th 921, 937 ("In sum, the cases are clear that an agreement to circumvent
3 applicable zoning laws is invalid and unenforceable."); *Land Waste Mgmt. v. Contra Costa City Bd.*
4 *of Supervisors* (1990) 222 Cal.App.3d 950, 958 ("Issuance of a permit inconsistent with zoning
5 ordinances or the general plan may be set aside and invalidated as *ultra vires*.").

6 The threat of litigation, or of Congress passing legislation, does not permit Defendants to
7 ignore the Community Plan. *Summit Media*, 211 Cal.App.4th at 937 ("An agreement is *ultra vires*
8 when it contractually exempts settling parties from ordinances and regulations that apply to everyone
9 else and would, except for the agreement apply to the settling parties."). Yet, that is what is
10 happening here. Defendants readily admit that the Band cowed them into entering the Agreement by
11 finding non-local members of Congress to push legislation to put the land into trust. *See* Ex. 18.

12 The legislation was introduced by Doug LaMalfa, a California representative from Richvale,
13 a district adjacent to the Oregon/Nevada border, and pushed through a subcommittee chaired by Mr.
14 LaMalfa with the help of Norma Torres, a representative from the Pomona area and a ranking
15 member on the subcommittee. Mr. LaMalfa's district and his interests are significantly different
16 from Santa Barbara. His district is much less diverse and heavily Republican, while Santa Barbara is
17 far more diverse and heavily Democrat. The Valley's local representative, Salud Carbajal, and his
18 predecessor, Lois Capps, both stressed, however, that this requires a local resolution. *See* Exs. 16,
19 17. No matter the bravado with which the Band, Mr. LaMalfa, or Ms. Torres proclaim that the
20 legislation will pass the House (and it must then, of course, pass the Senate and be signed by the
21 President), this is a local issue on which members defer to local representatives, not disinterested,
22 far-flung representatives who can ignore impacts on the community or environment, and the threat
23 does not authorize Defendants to act *ultra vires*.

24 The Court does not have to wait to act until Defendants have voted on the Agreement;
25 Defendants' intent gives the Court jurisdiction. *See Costa Mesa*, *supra*, 209 Cal.App.4th at 305-06
26 (enjoining city from issuing RFPs that would have outsourced jobs) (quoting *Maria P. v. Riles*
27 (1987) 43 Cal.3d 1281, 1292 (plaintiffs need not "wait until they have suffered actual harm" and
28 *City of Torrance v. Transitional Living Centers for Los Angeles, Inc.* (1982) 30 Cal.3d 516, 526

(injunctive relief available where injury is "actual or threatened")).

B. The Agreement is Incompatible with the Community Plan

The General Plan, which includes the Community Plan, is the "constitution" that guides planning in the Valley. *See Orange Citizens for Parks & Recreation v. Superior Court* (2016) 2 Cal.5th 141, 152. It binds not only landowners but also the County itself. *Id.* at 153 ("The propriety of virtually any local decision affecting land use and development depends upon consistency with the applicable general plan and its elements.") (citations omitted). Any proposed use that does not "further the objectives and policies of the general plan and not obstruct their attainment" is incompatible with the Community Plan. *Ibid.* (quotations and citation omitted).

Defendants have admitted repeatedly that the Development obstructs the objectives of the Community Plan. *See, e.g.*, Ex. 8 at 19, 43; Ex 13 at 6-7, 19; Ex. 6 at 3. Because the Agreement simply authorizes construction of the incompatible Development, the Agreement is *a fortiori* incompatible with the Community Plan. Defendants cannot now ignore those admissions:

The Agreement Does Not Protect Agricultural Land. The Agreement allows the Band to convert 1,227 acres of agricultural land into other uses, violating the directive that agricultural land "shall" be preserved and protected for agricultural use. *See, e.g.*, Ex. 3 at 10, 22, 73; Ex. 8 at 12. "Shall," as used in the Community Plan, is "an unequivocal directive." Ex. 3 at 14. The County has no leeway; it must oppose anything that contradicts this directive. The County therefore cannot approve such a drastic decrease in agricultural land.

The Agreement Impermissibly Expands Urban Development. Per the Community Plan, the County "shall" limit urban development to the Santa Ynez, Los Olivos, and Ballard urban boundaries, which "shall" be the limits of urban development, and which "shall not" be extended except as part of an update of the Community Plan. Ex. 3 at 22. Camp 4 is beyond those urban limits and the Development is an "urban" development. *See, e.g.,* Ex. 3 at 33, 35, 41 (showing urban boundaries); Ex. 11 at 8, 21; Ex. 9 at 9. This further confirms that the Agreement is incompatible with the Community Plan and therefore cannot be signed.

The Agreement Spoils the Valley's Character. The Development, at the crossroads of state routes 154 and 246, creates 143 residences on one-acre lots and 30 acres of tribal facilities, including

1 a 12,000 square foot community center that will host 100 "special" events per year, a banquet
2 hall/exhibit facility, office complex, and tribal community space, and brings at least 415 new
3 residents, more than 40 employees, and 800 additional visitors per weekend to this rural area.[4] *See*
4 Ex. 12 at 2, 19; Ex. 8 at 44; Ex. 4 at 3-59. These changes (1) threaten requirements imposed to
5 protect the environment and community and (2) impact public health and safety concerns, such as
6 groundwater and water resources, demand for public safety services, air quality, and traffic control.
7 Ex. 10 at 13. The only reliable analysis performed to date determined that the area lacks resources to
8 support this type of development. Ex. 13 at 5.

9 The Agreement obstructs the goals of the Community Plan in numerous other ways, such as
10 by ignoring resource adequacy requirements. *See e.g.*, Ex. 3 at 10, 75-157; Ex. 13 at 7-8; Ex. 8 at
11 45-49; Ex. 9 at 13-22. These additional failures confirm what has already been established. Plaintiff
12 has a reasonable probability of success.

13 **C. To Amend the Community Plan, Defendants Must First Comply with CEQA and Additional Requirements that Protect the Community**
14

15 Defendants cannot just deem the Agreement an amendment; it must follow a detailed,
16 statutorily required process. *See, e.g.*, Gov. Code, §§ 65350-65356; *DeVita v. City of Napa* (1995) 9
17 Cal.4th 763, 773-74 (1995) ("Once a general plan is adopted, it may be amended . . . after
18 undergoing a series of procedural steps. . ."); *Orange Citizens, supra,* 2 Cal.5th at 152-154
19 (describing process County "must" follow). The process "guarantees" the public a meaningful role.
20 *Id.* at 153; Gov. Code, § 65351. It is "essentially a 'constitutional convention' at which many
21 different citizens and interest groups debate the community's future." *Orange Citizens, supra,* 2
22 Cal.5th at 152 (quoting Fulton & Shigley, Guide to California Planning (4th ed. 2012) p. 118).

23 The Planning Commission, not just the Supervisors, must consider the proposed amendment.
24 Gov. Code, § 65353. Commission staff must analyze the effect of the changes on all other elements
25 of the General Plan. Ex. 15 at ¶ 4. Staff must notify impacted individuals, groups, and agencies so
26
27
28

[4] This estimate is low because the EA is too vague to determine what will actually be built. For instance, each residence can build undefined "accessory structures," which could include residential second units, agricultural structures, residential accessory structures, greenhouses under 300 square feet, or an artist studio or guesthouse. Ex. 8 at 41. These structures increase the number of new residents. *Id.* Residential second units could double the number of residents with twice the impacts on traffic, water, solid waste, public services, and other resources. *Id.* at 42.

that it can receive relevant and informed advice and recommendations. *Id.* at ¶ 7. The Commission must hold at least one noticed public hearing and make a recommendation approved by at least half of its members. Gov. Code, §§ 65353-54. The Board must also hold independent hearings after receiving the Commission's recommendations. Gov. Code, §§ 65355-56; *Orange Citizens, supra,* 2 Cal.5th at 152-53; *DeVita*, *supra,* 9 Cal.4th at 773-74.

An amendment is also a "project" for CEQA purposes and therefore must consider whether an environmental impact report is required. *See* Cal. Code. Regs., tit. 14, § 15378, subd. (a)(1) ("project" includes the "amendment of local General Plans or elements thereof pursuant to Government Code Sections 65100-65700"). Defendants' numerous admissions about the impacts the Development will have on the community and environment establish that an Environmental Impact Report will be required before Defendants can approve the Agreement.

This process protects residents from attempts like this to subvert the Community Plan.

D. The Community Plan's Directive to the County to Pursue Legally Enforceable Agreements Does Not Authorize Defendants to Enter an Agreement that is Incompatible with the Community Plan

The only "authority" Defendants cite for entering the Agreement is their ability to negotiate "satisfactory legally enforceable agreement[s]." *See* Ex. 1 at 4-5; Ex. 2 at 8. Any such agreement must, however, effectuate the goals and objectives of the General and Community Plans. *See* Gov. Code, § 65300.5 (general and community plans must be internally consistent); Ex. 3 at 4 ("policy" must be based on the plan's goals and objectives; "actions" carry out the plan's policy). The plain language of the provisions on which Defendants rely emphasize the required consistency:

> **Policy LUG-SYV-6**: The County *shall oppose the loss of jurisdictional authority* over land within the Plan area *where the intended use is inconsistent* with the goals, policies and development standards of the Plan *or in the absence of* a satisfactory legally enforceable agreement.
>
> **Action LUG-SYV-6.1**: The County shall pursue *legally enforceable* government-to-government agreements with entities seeking to obtain jurisdiction over land within the Plan Area to *encourage compatibility*

> with the surrounding area and *mitigate environmental and financial impacts* to the County.

Ex. D at 22-23 (emphases added). An acceptable agreement must therefore (1) be enforceable, (2) be satisfactory, (3) be consistent with the Community Plan, (4) encourage compatibility with the surrounding area, and (5) mitigate environmental and financial impacts. *See* Ex. 3 at 22-23. The Agreement satisfies none of these requirements. By way of example:

The Agreement is Incompatible with the Community Plan and Surrounding Area. Defendants have, as described previously, admitted repeatedly that the Development is incompatible with the Community Plan and surrounding area and cannot pretend those admissions do not exist.

The Agreement Does Not Mitigate Environmental Impacts. Defendants have admitted that the Agreement's mitigation measures do not "provide adequate protection" because they do not sufficiently minimize or avoid impacts to land resources, water resources, air quality, biological resources, or public services. *See* Ex. 10 at 14-15 (citing Ex. 8 at 35-40, Ex. 9 at 25-27). Proving the illusory nature of the mitigation measures, as Defendants have explained, they generally refer vaguely to "Best Management Practices" and provide no data regarding their effectiveness or ability to mitigate any impacts. *Id.* at 15; Ex. 13 at 12-14; Ex. 8 at 35-40; Ex. 9 at 25-27. Without this information, Defendants cannot claim that the Agreement mitigates environmental impacts.

The Agreement Does Not Mitigate Financial Impacts. The $178,000 per year the Band will provide is insufficient to offset the additional services the County will have to provide. *See* Ex. 13 at 7-8; Ex. 8 at 45-49; Ex. 9 at 13-22 (describing required additional services).

The Agreement is not a "satisfactory legally enforceable agreement." The Agreement is really a "Memorandum of Understanding" because it provides insufficient specificity for Defendants to know what they are agreeing to or to hold the Band accountable. For example, the Agreement does not identify where the Band will build the houses. *See* Ex. 2 at 13 (the "exact location of houses is still undecided"). The Band can therefore develop areas that impact the community in ways Defendants have not considered. This level of vagueness and ambiguity permeates the entire Agreement, rendering it unsatisfactory and raising significant concerns about its enforceability.

As another example, the residences will purportedly comply with descriptions in "Alternative

B" as referenced on specified pages of the EA. Ex. 1 at p. 13, ¶ 11. But those pages do not describe the residences. Defendants believe the residences will comply with a vague description included in a different part of the EA (*see* Ex. 2 at 6; Ex. 4 at 2-4), but nothing in the Agreement confirms that belief. If it is true, then some, but not all, characteristics of a different alternative are incorporated into the Agreement. Defendants have no way of knowing which characteristics the Band agrees are incorporated and no method of enforcing its expectation.

Similarly, the Agreement only requires the Band to pay the County $178,000/year. *See* Ex. 1 at p. 11-13, ¶¶ 9-10. Defendants expect, however, to receive additional payments listed in the FONSI's mitigation plan. *See* Ex. 2 at 9. The Agreement does not mention these additional payments and, to the contrary, says that any impacts not covered by the $178,000 "will be mitigated solely by the County at no additional cost to the Band for the term of this Agreement." *Id.* at ¶ 10.

Most glaringly, the Band is not precluded from voiding the Agreement by arguing that Defendants acted *ultra vires*. *See Foxen, supra* 166 Cal. at 82 (*ultra vires* acts are "absolutely void"). While Plaintiff disputes that Defendants achieved any benefits through this Agreement, any claimed benefits are illusory given the Band's ability to void the Agreement.

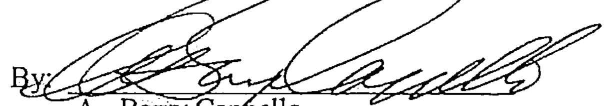
No lawyer in private practice would advise a client to enter an agreement that exposes the client to this much uncertainty and offers so few protections. The Community Plan prevents the County from foisting such an agreement on its residents.

CONCLUSION

For the foregoing reasons, the Court should grant the TRO and order Defendants to show cause why a permanent injunction should not be granted. There is no urgency to entering the Agreement and the ramifications of not adjudicating Defendants' authority now are too severe to ignore.

DATED: October 25, 2017

CAPPELLO & NOËL LLP



By: A. Barry Cappello
Wendy D. Welkom
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1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF SANTA BARBARA

3 I am employed in the County of Santa Barbara, State of California. I am over the age of 18 years and not a party to this action. My business address is 831 State Street, Santa Barbara,
4 California 93101. On October 25, 2017, I served the foregoing document described as **PLAINTIFF'S EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER**
5 **AND ORDER TO SHOW CAUSE RE PRELIMINARY INJUNCTION TO ENJOIN DEFENDANTS FROM APPROVING INCOMPATIBLE LAND USE; MEMORANDUM OF**
6 **POINTS AND AUTHORITIES IN SUPPORT THEREOF** on the interested parties in this action:

7 SEE ATTACHED SERVICE LIST

8 ☐ **BY U.S. POSTAL SERVICE:** This document was served by United States mail. I enclosed the document in a sealed envelope or package addressed to the person(s) at the address(es)
9 above and placed the envelope(s) for collection and mailing, following our ordinary business practices. I am readily familiar with this firm's practice of collecting and processing
10 correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal
11 Service at Santa Barbara, California, in a sealed envelope with postage fully paid.

12 ☐ **BY FACSIMILE:** The document(s) were served by facsimile. The facsimile transmission was without error and completed prior to 5:00 p.m. A copy of the transmission report is
13 available upon request.

14 ☐ **BY OVERNIGHT DELIVERY:** The document(s) were served by overnight delivery via FedEx. I enclosed the document in a sealed envelope or package addressed to the person(s)
15 and the address(es) above and placed the envelope(s) for pick-up by FedEx. I am readily familiar with the firm's practice of collection and processing correspondence on the same day
16 with this courier service, for overnight delivery.

17 ☐ **BY E-MAIL OR ELECTRONIC TRANSMISSION:** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the
18 documents to be sent to the persons at the e-mail addresses listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication
19 that the transmission was unsuccessful.

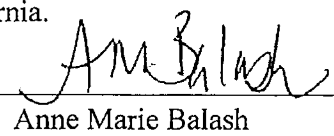
20 ☒ **BY HAND DELIVERY:** The document(s) were delivered by hand during the normal course of business, during regular business hours.

21

☒ (State) I declare under penalty of perjury under the laws of the State of California that the
22 foregoing is true and correct.

23 ☐ (Federal) I declare that I am employed in the office of a member of the Bar of this Court, at whose direction the service was made. I declare under penalty of perjury under the laws of
24 the United States of America that the foregoing is true and correct.

25 Executed on October 25, 2017, at Santa Barbara, California.

26 

27 Anne Marie Balash

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