

# SANTA BARBARA COUNTY BOARD AGENDA LETTER



Clerk of the Board of Supervisors  
105 E. Anapamu Street, Suite 407  
Santa Barbara, CA 93101  
(805) 568-2240

**Agenda Number:**  
**Prepared on:** January 24, 2003  
**Department Name:** County Administrator  
**Department No.:** 012  
**Agenda Date:** February 4, 2003  
**Placement:** Departmental  
**Estimate Time:** 10 minutes  
**Continued Item:** No  
**If Yes, date from:**

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**TO:** Board of Supervisors

**FROM:** Michael Brown, County Administrator, Ext. 3400

**STAFF CONTACT:** Jennifer C. Klein, Deputy County Counsel, Ext. 2950

**SUBJECT:** Consider Letter to Governor Gray Davis Regarding Re-negotiation of the Tribal-State Compact between the State of California and Santa Ynez Band of Chumash Indians.

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## Recommendation(s):

That the Board of Supervisors:

Review, execute, and submit the letter from the County of Santa Barbara to Governor Gray Davis regarding re-negotiation of the Tribal-State Compact between the State of California and Santa Ynez Band of Chumash Indians, attached as EXHIBIT "A".

## Alignment with Board Strategic Plan:

The recommendation(s) are primarily aligned with Goal No. 2., A Safe and Healthy Community in Which to Live, Work, and Visit; and Goal No. 4., A Community that is Economically Vital and Sustainable.

## Executive Summary and Discussion:

In 1988, Congress enacted the Indian Gaming Regulatory Act (IGRA) as the federal statute governing Indian gaming in the United States. The system of regulation fashioned by Congress in the IGRA rests on an allocation of regulatory jurisdiction among the federal government, the state in which a tribe has land, and the tribe itself. IGRA makes Class III gaming lawful if authorized by tribal ordinance, if located in a state that permits such gaming, and if it is conducted in conformity with a compact. Existing compacts between the State of California and California Tribes place conditions on Indian gaming to achieve and preserve the environmental, public safety, and public health objectives of both state and local governments. Moreover, the existing compacts provide the state the authority and the flexibility to renegotiate their terms to ensure those objectives are met.

According to Compact Section 10.8.3(b), the window of opportunity for initiating negotiation of an amendment to specifically to Compact Section 10.8, "Off-Reservation Environmental Impacts", is January 1, 2003 to March 1, 2003. According to Compact Section 4.3.3, the window of opportunity for re-negotiation of matters specifically encompassed by Section 4.3.1., regarding the number of allowable gaming devices, and Section 4.3.2, regarding revenue sharing with non-gaming tribes, is March 7, 2003 to March 31, 2003. Compact Section 12.0 is the general Compact provision governing amendments and renegotiations. According to Section 12.1, the terms and conditions of the Compact may be amended at any time by the mutual and written agreement of both parties.

The County is not a party to the Compact between the State of California and the Santa Ynez Band of Chumash Indians. However, the County and its residents are directly impacted by the gaming activity that the Compact authorizes and regulates. For that reason staff recommends sending the Governor a letter articulating County's interests and concerns as the State and the Tribe prepare to re-negotiate the Compact.

### **Mandates and Service Levels:**

Unknown, but potentially increased service levels and mandates depending on nature of re-negotiated Compact language, specifically if the number of gaming machines are allowed to increase facilitating expansion of gaming and related off-reservation impacts and need for services.

### **Fiscal and Facilities Impacts:**

Unknown, but potentially significant costs addressing unmitigated off-reservation impacts caused by Tribal gaming if County's concerns are not incorporated into a renegotiated Compact.

### **Special Instructions:**

Authorize the Clerk of the Board of Supervisors to mail a copy of the approved letter to:

Governor Gray Davis  
State of California  
Office of the Governor  
State Capitol, Fl. 1  
Sacramento, CA 95814

Jack O'Connell  
State Senator  
228 W. Carrillo, Suite F  
Santa Barbara, CA 93101

Vincent Armenta  
Chairman  
Santa Ynez Band of Chumash Indians  
P.O. Box 517  
Santa Ynez, CA 93460

Senator Jim Battin  
State Capitol, Room 3074  
Sacramento, CA 95814

Hannah Beth Jackson  
State Assembly Member  
101 W. Anapamu Street, Suite A  
Santa Barbara CA 93101

Bill Lockyer, Attorney General  
California Department of Justice  
1300 "I" Street, #1101  
P.O. Box 944255  
Sacramento CA 94244-2550

Governor's Negotiating Team:

Cruz Reynoso  
Anthony Joseph  
Frederick Wyle

City of Solvang  
P.O. Box 107  
Solvang, Ca 93464

Santa Ynez River Water Con. District ID# 1  
P.O. Box 719  
Santa Ynez, CA 93460-0719

**Concurrence:** County Counsel

**Attachment:** Letter to Governor

ATTACHMENT "A"  
Letter to Governor Gray Davis

February 4, 2003

Governor Gray Davis  
State of California  
Office of the Governor  
State Capitol, Fl. 1  
Sacramento, CA 95814

Re: Re-negotiation of the Tribal-State Compact between the State of California  
and Santa Ynez Band of Chumash Indians.

Dear Governor Davis,

This letter is sent on behalf of the County of Santa Barbara Board of Supervisors to respectfully request that you pursue re-negotiation of the Tribal-State Compact between the State of California ("State") and Santa Ynez Band of Chumash Indians ("Tribe") and that the County of Santa Barbara ("County") be involved in the re-negotiation process to the maximum extent possible as its interests and the interests of its residents are directly impacted by the conduct of gaming by the Tribe.

According to Compact Section 10.8.3(b), the window of opportunity for initiating negotiation of an amendment specifically to Compact Section 10.8, "Off-Reservation Environmental Impacts", is January 1, 2003 to March 1, 2003. According to Compact Section 4.3.3, the window of opportunity for re-negotiation of matters specifically encompassed by Section 4.3.1, regarding the number of allowable gaming devices, and Section 4.3.2, regarding revenue sharing with non-gaming tribes, is March 7, 2003 to March 31, 2003. Compact Section 12.0 is the general Compact provision governing amendments and renegotiations. According to Section 12.1, the terms and conditions of the Compact may be amended at any time by the mutual and written agreement of both parties.

In light of the provisions described above and in order to resolve problematic and inadequate sections of the Compact, the Board of Supervisors hereby requests that you (1) request re-negotiation of the Compact no later than March 1, 2003, for re-negotiation of Section 10.8 pursuant to Section 10.8.3(b), (2) request re-negotiations pursuant to Section 4.3.3, (3) generally seek amendments to and re-negotiation of the Compact under Section 12.1 in order to improve and clarify the language, impact, and scope of the Compact, and (4) that County be permitted to participate in the re-negotiation process.

In support of these requests, County offers its experience, concerns, criticism, and suggestions regarding Indian gaming under the present Compact. First, Section 10.8.1, which forms the foundation for environmental protection under the Compact is virtually meaningless as drafted. It states in relevant part, "In fashioning the environmental protection ordinance, the Tribe will make a good faith effort to incorporate the policies and purposes of the National Environmental Policy Act and the California Environmental Quality Act consistent with the Tribe's governmental interests. While County appreciates attempts by both the Tribe and the State to preserve their interests, sovereign self-governance and environmental protection respectively, this section must be re-drafted in a way that makes environmental protection mandatory. At a minimum, the Tribe's governmental interest should not be permitted to eclipse environmental protection.

Second, Section 10.8.2 is insufficient to achieve the environmental protection goals of Section 10.8 generally. It is critical that this section be amended to require that standards be promulgated for guiding the determination of what constitutes potential off-reservation environmental impacts. Without such standards, determination of what constitutes a significant environmental impact is meaningless. In County's experience, the Tribe's Environmental Protection Ordinance contains no standards for determining whether an impact may be significant. The Tribe has merely stated that impacts identified by environmental documents were not significant and proceeded with its casino expansion project. The lack of standards makes environmental review meaningless, and environmental protection completely within the Tribe's voluntary option. While the County, the State, and its citizens can hope that the Tribe will rigorously and consistently analyze and mitigate the environmental impacts of gaming projects, there is nothing in the current Compact that requires it to do so. This aspect of the Compact must be repaired.

Third, in addition to the public information and consultation requirements encompassed by this Section 10.8, County requests that you seek an amendment to this section that would require the Tribe to avoid or mitigate significant environmental impacts in accordance with promulgated, and mutually agreeable standards. Because County government and County residents are directly impacted by the Tribe's casino and related development, it is County's position that the Tribe should be required to seek and obtain County's review and approval of such development consistent with state and local environmental laws. Moreover, the Tribe's decision to pursue

casino development should be made subject to the California Environmental Quality Act ("CEQA"), with the Tribe acting as the lead agency and with judicial review of the Tribe's decision in the California courts.

In County's experience, the Tribe has generally met with and listened to the concerns of the County and the public. However, the Tribe generally has not addressed the concerns expressed by the County, nor given reasons why County's concerns were not addressed. A process that goes beyond "consultation" is needed. At a minimum, the Tribe should be required to enter into enforceable agreements with the County to ensure environmental protection at levels that are at least as stringent as those of the surrounding local community, and to ensure that County receives adequate financial compensation for any environmental protection related costs it incurs that are caused by the Tribe's gaming activities.

Fourth, in addition to the negative environmental impacts caused by Tribal gaming, a host of other impacts have negatively impacted the County and its residents, that have not been off-set by positive benefits frequently cited by the Tribe, such as voluntary tribal contribution to local charitable causes. These impacts include increased demand for County services -- including, water, sewer, fire inspection and protection, rescue/ambulance services, food inspection, health and social services, law enforcement, roads, transit, flood control, and other infrastructure and public services -- without a corresponding increase in revenue. County requests that you seek amendments to the Compact that adequately compensate County for these costs. At a minimum, the renegotiated Compact should require enforceable intergovernmental agreements between the County and the Tribal that address the costs and provision of such services before gaming is permitted to commence or continue.

Fifth, as presently written Section 5.0 which requires the Tribe to pay into the "Special Distribution Fund", does not *guarantee* compensation to the County of Santa Barbara for any impacts caused by the Tribe's gaming activity. County requests that you re-negotiate this section to give County an entitlement to a portion of these funds adequate to compensate County for its costs caused by tribal gaming. This compensation is critical, as lack of funds will impair provision of services to all county residents. Overall, it is in the interest of the County, the Tribe, and the State to ensure that gaming does not negatively affect the provision of public services.

Sixth, because California's experience with Tribal gaming is relatively new, County recommends you negotiate for an amendment to the Compact that schedules set opportunities for re-negotiation and amendment to the Compact, so that this document may continue to be improved over its lifetime. Furthermore, County suggests you establish appropriate criteria and guidelines to guide the State's discretion during future Compact negotiations.

It is the County of Santa Barbara's belief that local, state, and tribal governments can and should work together to develop mutually agreeable, clear, and beneficial Compact provisions. Given the multitude of important interest that local governments have concerning tribal gaming

*Governor Gray Davis*  
*February 4, 2003*  
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operations, it is logical that they be included in Compact re-negotiations. Public attention is focussed now, more than ever on the propriety and regulation of Tribal gaming in California. The County of Santa Barbara sincerely appreciates your attention to this letter and looks forward to your response to the urgent matters it raises.

Sincerely,

Naomi Schwartz  
Chairperson  
BOARD OF SUPERVISORS  
COUNTY OF SANTA BARBARA

cc:

Vincent Armenta, Santa Ynez Band of Chumash Indians  
Hannah Beth Jackson, State Assembly  
Tom McClintock, State Senate  
Jim Battin, State Senate  
Bill Lockyer, California Attorney General  
David Rosenberg, Director of Community and Intergovernmental Relations, Governor's Office  
Governor's Negotiating Team: Cruz Reynoso, Anthony Joseph, and Frederick Wyle  
Santa Ynez River Water Con. District ID#1  
City of Solvang