

Alexander, Jacquelyne

From: Gerry Shepherd <shepherd@west.net>
Sent: Tuesday, August 13, 2013 11:07 AM
To: SupervisorCarbajal
Cc: sbcob; Farr, Doreen; Adam, Peter; Lavagnino, Steve; Wolf, Janet
Subject: Cancellation of August 20 Agenda Item

Dear Chairman Carbajal:

This is a communal request from numerous groups throughout the Santa Ynez Valley, as well as from Santa Barbara, following a meeting this morning of their representatives.

We, the county constituents who elected all five supervisors and tasked them with responsibility for over-all county welfare, are united in opposition to our county representatives entering into the Santa Ynez Band of Chumash (Band)-requested dialogue agendized for your Tuesday, August 20, 2013 Board of Supervisors meeting. We urgently and respectfully request that this dialogue be postponed until the following questions are addressed:

1. On August 7th, Band Chairman Armenta sent the County a “courtesy letter” informing the County that the Band had submitted an application to the Bureau of Indian Affairs to take the 1,400 acres into federal trust – an application that we learned was submitted at the end of July. Can you keep this item for dialogue with the Band on the agenda for August 20th before County Counsel has the opportunity to review the application and provide the Supervisors with legal counsel?
2. The Band owns multiple real estate property within the greater Santa Ynez Valley, including many off-reservation homes. Do you, as our representatives, support the claim that there is a "tribal housing need"? Under what authority does the Board of Supervisors have to determine what members of the Band need?
3. On, August 2, 2012, Chandra Wallar included in a memo to the submitted to the “United States House of Representatives Committee on Natural Resources Subcommittee of Indian and Alaska Native Affairs” a clearly worded statement regarding the legality of the County entering into a discussion, dialogue or agreement with the tribe on a government to government basis, stating “...judicially enforceable agreements between counties and tribal governments be required to ensure that potential impacts resulting from projects are fully analyzed and mitigated to the satisfaction of the surrounding local governments in the long term.” Are you familiar with this memorandum? Per 25 CFR 151 Federal Government (Secretary of the Interior) states that the Secretary will not agree to development restrictions on land in trust. If the Secretary of the Interior will not restrict development, how does the County expect to safeguard the Community with agreements? Has County Counsel explained this to you?
4. Are you willing to risk opening a dialog that could trigger a violation of the spirit and the very letter of the Santa Ynez Valley Community Plan? Does the Board of Supervisors wish to set a precedence whereby any large land owner can come before the Board to discuss their individual agenda, rather

than using the in place functions of the County's Planning Department which is what the County's own guidelines stipulate?

5. As protectors of our land use policies, did you know that the Santa Ynez Valley Community Plan states and provides that the County *shall oppose* removal of land from the community plan boundaries and its jurisdiction? Are you willing to protect Camp 4's zoning and agricultural status? Would the SYV Plan need to be amended before any Fee-To-Trust transaction could occur due to the fact that such a transaction would be expressly inconsistent with the Plan? Are you confident in the Staff of SB County to safeguard against a precedent-setting negative consequence which could affect the entire County and beyond?
6. If the BOS moves to approve entering into a dialogue with the Band regarding land use, zoning, agricultural preservation, development process knowing that the subject is "How can we avoid the rules in place to carry out our tribal development plans?", do they recognize that the board is being used as a tool to say the tribe has local support?
7. What can to be done to protect the Santa Barbara and SYV residents, agricultural lands and other fee property owners, present and future, that rely on the aquifer that is directly under the Camp 4 acreage from tribal ownership claims, considering the numerous tribes now filing for water rights. For example, the Aqua Caliente Band of Cahuilla Indians is suing the Coachella Valley Water District and Desert Water Agency, claiming senior water rights in an effort to block neighboring communities from withdrawing water from the area's aquifer. In addition, there was a Law Review article in the UC Hastings College of Law stating that the Santa Ynez Band of Chumash could move forward legally to establish ground water rights. The letter states: "This note will lay out arguments the Santa Ynez Chumash Band could use to secure a right to groundwater on their reservation in Santa Barbara County as their successful casino brings in more and more visitors at the same time that groundwater beneath their reservation is depleted by non-Indian users.
8. Supervisor Carbajal, as board chair, are you of the opinion that taking allowing Santa Ynez Valley property to be placed into federal trust is good for the county economically? Does the board of supervisors understand how such an action can undermine the citizen rights for the entire county population?
9. Are you willing to have public notice made of donations which could reflect a *conflict of interest* perception, if not a *quid pro quo*?
10. Can the BOS demonstrate unity of purpose after studying and reviewing the historical data in your possession on the Band's status and expansion blueprint and vote unanimously with Supervisor Farr in opposing fee to trust??
11. Can Supervisor Farr represent her constituents effectively in the manner publicly stated of opposition to loss of county land and unregulated commercial expansion without each District Supervisor's support? Should all five supervisors consider the importance of safe-guarding the economic well-being of all five supervisorial districts when making decisions?

Thank you for your efforts on behalf of our county population and for your consideration of our request to postpone this August 20 agenda item.

Sincerely,
Valley Leadership Group,
Representatives from various organizations of
Santa Ynez Valley and Santa Barbara
Contact point-person: G. B. Shepherd, representing Santa Ynez Valley Concerned Citizens,
info@syvconcernedcitizens.com

**KENNETH R. WILLIAMS
ATTORNEY AT LAW
980 9th Street, 16th Floor
Sacramento, CA 95814
(916) 543-2918**

April 29, 2013

Honorable Salud Carbajal, Chairman
Santa Barbara County Board of Supervisors
105 E. Anapamu Street
Santa Barbara, CA 93101

Re: Vincent Armenta's letter dated March 6. 2013

Dear Supervisor Carbajal,

I represent two prominent local citizens groups, Preservation of Los Olivos (POLO) and Preservation of Santa Ynez (POSY). Since 2002, POLO and POSY have been "dedicated to preserving the highest quality of life in our rural community." (www.polosyv.org)

Thank you for distributing Mr. Armenta's March 6, 2013 letter and your April 18, 2013 response. POLO and POSY appreciate your careful approach. We also respectfully accept your and Supervisor Farr's informal invitations to comment on these issues. That is the purpose of this letter.

Mr. Armenta, ostensibly as Chairman of the Santa Ynez Band of Chumash Indians (SY Band), requested a "government-to-government dialogue" with the County regarding 1400 acres of land, known as Camp 4, which the SY Band acquired in 2011. The land is held in fee by the SY Band. It is not in trust for the SY Band. There is not even a fee-to-trust application pending.

POLO and POSY object to Mr. Armenta's "government-to-government dialogue" request because it relates to private property owned by the SY Band in fee. Fee ownership of land by a tribe does not convert that land to tribal government land worthy of special treatment or consideration or government-to-government negotiations. (*City of Sherrill v. Oneida Indian Nation of New York*, 544 U.S. 197 (2005).)

Furthermore, the Ninth Circuit Court of Appeal has held that the Chumash waived any aboriginal title claims that it may have had in California, when it failed to file a timely claim pursuant to the Land Claims Act of 1851. (*United States ex rel. Chunie v. Ringrose*, 788 F.2d 638 (1986) cert. denied 479 US 1009 (1986); see *Barker v. Harvey*, 181 U.S. 481.) Although this may seem harsh, it is important to add that, pursuant to a 1928 Act of Congress, California Indians, including the Chumash, were later compensated on an equitable and "moral" basis for any lost aboriginal title or treaty claims. (*Indians of California v. United States*, 98 Ct. Cl. 583 (1942).)

Thus, the 1400 acres should be treated like any other privately owned land. On the other hand, it cannot be denied that this particular parcel of land is a critical part of the Santa Ynez rural community and life style. It is currently zoned AG-II- 100 which means that it is agricultural land with a minimum parcel size of 100 acres. Also it is subject to multi-year Agricultural Preserve contracts which limit the use of the property to agricultural uses. The SY Band must comply with these land use rules. It would require a General Plan Amendment to allow a different use.

In summary, Mr. Armenta's and the SY Band's request for "government-to-government" preference and special treatment with respect to the future development of this privately owned land is inappropriate and should be rejected. To discriminate in favor of Mr. Armenta or the SY Band would violate the due process and equal protection constitutional rights of every other individual and property owner in the community. We urge the County not to go down that perilous path. (See 42 USC section 1983) The trend of recent Supreme Court case law is away from such unfair preferences and we expect it to continue to move in that direction.

Finally, several other incorrect statements in Mr. Armenta's letter should be addressed for the record, including:

1. Mr. Armenta claims that the County had a "defacto policy" of ignoring the SY Band's request to discuss the fee-to-trust process. But, as I am sure you know, this statement is wrong. Although POLO and POSY haven't always agreed with the County's dealings with the SY Band, it cannot be denied that the County consistently tried to work with, or appease, the SY Band – perhaps too much so from POLO and POSY's perspective.
2. Mr. Armenta describes the fee-to-trust process as a "federal annexation process." This is incorrect and creates confusion about the fee-to-trust procedures. The Federal government does not annex trust lands; nor could it annex property subject to State regulation. (*Hawaii v. Office of Hawaiian Affairs*, 556 U.S. 163 (2009).) Instead, after an application is filed by a tribe, and all the appropriate pre-conditions are met, the federal government may accept a transfer of land and hold in trust for a tribe. In this case, the SY Band has not applied to have the land taken into trust and has not transferred the land to the United States.
3. Mr. Armenta claims that the County has not commenced negotiations on the Cooperative Agreement (CA). This is true in a sense. The County takes the position that it will not initiate discussions with the SY Band about the proposed CA unless and until the SY Band submits a fee-to-trust application with the BIA. (Chandra L. Waller, Santa Barbara County Executive Officer, written testimony submitted for the August 2, 2012 Oversight Hearing on Indian Lands by the US House of Representatives, Subcommittee of Indian and Alaskan Native Affairs.) Furthermore, the County has informed the SY Band that it would have to comply with CEQA at least with respect to off-site impacts of the proposed CA. (Id.) The SY Band has not applied to the BIA and apparently they do not want to comply with CEQA or other applicable State and local laws with respect to

the CA. So there have been no discussions. And, according to the County, negotiations will not begin unless it is in the context of the fee-to-trust BIA processes. Although POLO and POSY oppose the CA, they appreciate the County's willingness to be steadfast and forthright on the CEQA compliance, and no-negotiation-without-an-application, issues. That is the right approach.

4. Finally, it is important to note that the fact that the SY Band is trying to secure a CA before it submits a fee-to-trust application to the BIA is not an accident. Instead, and despite SY Band's comments to the contrary, it is a clear indicator that they intend to use this property for a gaming casino in the future. Although not precluded, local agreements are not usually required in fee to trust transfers for non-gaming purposes. (See 25 CFR sections 151.10 and 151.11) But, when the fee-to-trust acquisition is for gaming purposes, the Office of Indian Gaming requires the tribe to provide an agreement between the tribe and local officials resolving any and all jurisdictional issues. (See Office of Indian Gaming Checklist for Gaming Acquisitions and Gaming Related [Fee to Trust] Acquisitions (2007).) Thus, if it wants to use the property for gaming, and apparently it does, the SY Band must first negotiate and complete the CA with the County. POLO and POSY oppose the finalization of the CA for this reason and because it probably will not be honored or enforceable – especially if it is not approved by the Department of Interior. (See 25 USC section 81.)

Thank you for considering these comments. Please let me know if you have any questions.

Sincerely,



KENNETH R. WILLIAMS
Attorney at Law

Cc: POLO and POSY
Supervisor Doreen Farr
Supervisor Janet Wolf
Supervisor Peter Adam
Supervisor Steve Lavagnino
SBCEO Chandra L. Wallar
Congresswoman Lois Capps

Alexander, Jacquelyne

From: Cathie McHenry <cathie@hwy246.net>
Sent: Monday, August 12, 2013 3:59 PM
To: SupervisorCarbajal; Wolf, Janet; Farr, Doreen; Lavagnino, Steve; Adam, Peter
Cc: sbcob
Subject: BOS meeting August 20, 2013

W. E. WATCH
Women's Environmental Watch
Post Office Box 830
Solvang, California 93463

August 12, 2013

Chairman Salud Carbajal
Supervisor Janet Wolf
Supervisor Doreen Farr
Supervisor Steve Lavagnino
Supervisor Peter Adam

Dear Chairman and Supervisors;

I am writing on behalf of W.E. Watch a community organization founded in the early 1990's. We have been an active participant in the life of our valley for many years.

Chairman Carbajal has placed an item of grave importance on your agenda for August 20. The Chair has informed me personally that he wishes to ask the Board whether the Board wishes to merely engage in discussions with the Chumash to improve dialogue. The stated goal of the Chair and that of the Chumash are not the same. The Tribe has been very clear that the discussion is about Camp 4.

As members of the 450,000+ non-Chumash residents of the County of Santa Barbara, we respectfully ask that you vote NO on any question regarding special dialogue with the 143 member Chumash tribe. It is simply inappropriate. Each member of the Board of Supervisors was elected to represent the best interests of the constituents of Santa Barbara County not special interests.

For purposes of Camp 4 and any other property owned outside of the reservation the Chumash are just another large property owner who desire to develop their holdings. We have an entire department of the County designed to handle those issues – Planning and Development. If appropriate, there is even a procedure for amending the General Plan.

Further, the Board should refuse to engage in discussion at this point for two additional reasons. The tribe has filed a fee to trust application with the BIA. Whenever the BIA notifies the County of the application's completeness, the County will have an opportunity and duty to respond to the BIA. Recently, the tribe has made public a desire to seek a Congressional solution which completely bypasses the County and State.

At this time the only reasonable response for the Board is to insist that the Tribe pursue entitlements through the County just as would be required of any other property owner.

Sincerely,

Cathie McHenry
President