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Dr. Glenn Russell
Director of Planning & Development
County of Santa Barbara
123 E. Anapamu St.
Santa Barbara, CA 93101

"Chumash" Cooperative
Cooperative Agreement
and Development Plans

Dear Dr. Russell;

I recently furnished County Counsel, County Administrator Chandra Wallar and the Board of Supervisors with the enclosed materials. I represent "No More Slots," one of several community groups in the Santa Ynez Valley that oppose expansion of the existing, unregulated, unsupervised and uninspected Indian gambling casino at Santa Ynez. These Valley groups and citizens also oppose the conversion of fee owned Indian lands within the County to Indian trust status being sought by the community of descendants at Santa Ynez currently calling themselves the "Santa Ynez Band of Chumash Indians."[1]

This opposition is not just based on the numerous problems of increased crime, traffic, pollution, etc. created by this largely unregulated gambling casino, which currently is allowed to operate outside of all of the state and county laws and rules despite the many negative impacts of gambling and crime which are prevalent at and around the casino complex. This concern extends to the immunity federal Indian trust land attains from all the major taxes needed to fund the demands that are created upon public services and infrastructure, provided at the non-Indian citizens' expense.

The current state of federal "Indian law," largely a creature of common law court decisions, and some federal statutes and rules, is inimical to the state and local laws and rules enacted to facilitate orderly, aesthetically and economically appropriate projects. Unfortunately under these federal rules, policies and case law, making any kind of agreement, whether called a Memorandum of Understanding [M.O.U.], a Municipal Service Agreement [M.S.A.] or a "Cooperative Agreement" as the Santa

[1] Previously calling themselves the Santa Ynez Band of Mission Indians.

Ynez Band has proposed, is largely ineffective. These type of "agreements" are also manipulative and often disingenuous.

That is because such agreements are often used by Indian tribes to satisfy federal requirements that the tribe seeking to transfer land to Federal Indian trust must accommodate local communities and governments in order to facilitate a transfer of Indian owned fee lands into trust. [See 25 Code of Federal Regulations 151.110 and 151.111.]

The problem is two-fold. First, any agreement entered into prior to a transfer of Indian owned fee land into trust cannot be used to take that land back out of trust when and if the agreement is violated or breached by the tribe. Moreover the federal government does not recognize and will not enforce any agreements or the terms and conditions of any such agreement that is made prior to, or as a condition to, a transfer into trust, particularly any term or condition that affect the uses to which the "tribe" may put the land in the future. Because of federal rules arising from the trust transfer ***NOTHING*** can be done about any kind of breaches of the agreement even those used to facilitate the original transfer into trust.

Trust status not only puts the land beyond the state and local laws and taxes, it creates a common law immunity shielding the tribe and its government from lawsuit to enforce any term or condition in the agreement once executed and from any liability for breach of contract, torts or violations of laws or Constitutional rights.

Although it is widely believed that an Indian tribe or its government can "waive" their immunity from lawsuit, the fact is, such waivers are disfavored and the affected Indian tribes have successfully offered a plethora of excuses or legal theories and defenses why such waivers are null and void or in any case, legally unenforceable. These proffered theories and defenses are too numerous to list here however there are a few pointed examples in the enclosed EXHIBITS A., B. & C. provided herewith.

In addition to those samples I have enclosed another very recent example of why terms and conditions in an agreement with a "tribal government and any purported waiver of immunity is generally worthless, or at least subject to incredibly complex disputes such as this the external impacts of this recent Chukchansi intra-governmental dispute case,(portions enclosed). Most often disputes that have arisen from tribal breaches of an inter-governmental agreement are either thrown out of court altogether or result in the County, City or municipal government giving up enforcement or "negotiating" a very unfavorable compromise resulting in damages to that municipal government and its non-Indian citizenry.

As noted by Chandra Waller [page 2 of her memo in EXHIBIT "D" attached] only clearly judicially enforceable agreements should even be considered. To be frank, until there is a significant change in federal Indian law [case decision or statute] there

is currently no such thing as a *"judicially enforceable agreement"* with an Indian tribal government.

Besides the many defects, unanswered questions and fiscal inadequacy of the proposed Chumash "Cooperative Agreement", discussed in the enclosed report and letter to County Counsel there is no way Santa Barbara County should consider entering into any such agreement. The long-recognized Latin admonishment *"caveat emptor"* applies and a safe method to protect the County's interest is yet to be created by federal Indian law.

I do not know if the invitation from the Chumash to "meet and confer" regarding any proposed agreement will be formally placed on a future agenda by the Board or not. Obviously the Planning Department staff must be aware of these irreconcilable pitfalls if a staff report is needed in the future.

Attachment "A" represents a thumbnail sketch of the tax revenue that would be expected if a similar non-Indian development were approved on this Camp 4 property as discussed by the Santa Ynez Indian community who owns the land.

Besides the irreconcilable legal and jurisdictional problems, the immunities from legally enforcing any contracts with recognized Indian tribes and the impossibility of enforcing the terms and conditions of such a "Cooperative Agreement" once fee land is placed into Indian trust, the economics proposed are also hopelessly inadequate.

This annual payment of approximately $1,000,000 dollars for only 10 years does not include the mitigation fees that any private project of this size would be required to pay in order to mitigate numerous negative impacts on the community, not to mention the complete change in character of the area.

As pointed out in my analysis of the Cooperative Agreement (gold covered report enclosed) the offer to pay $1,000,000 a year for 10 years is woefully inadequate, and is even subject to ambiguous reductions from State distributions from the Special Distribution fund, it does not provide for future increases of any kind or for increased demands in the future made upon public services and infrastructure if there is additional development or changes in use, and lastly is likely unenforceable if any of the money ultimately due to the county is not paid for any reason.

Any speculative value to the County, often mentioned by the tribe, such as initial construction jobs or the addition of hundreds of families inhabiting the Camp 4 property is by far outweighed by the increased demands placed on existing public services and infrastructure and future needs, improvements and demands on the numerous public services needed to service these occupants in the future and the complete change in character for that entire region of the Valley.

Very truly yours,

James E. Marino

CC County Counsel
C.E,O. Chandra Wallar
Clerk of the Board of Supervisors

ATTACHMENT "A"

[1] Using tribal (non-binding) estimates for a development project of theirs on the land amounting to a housing subdivision placed on only one-half of the camp 4 property, [EXHIBIT 4 minutes of Tuesday 10 February 2004 tribal council meeting page 3] and for the unit value of market rate homes of a size of approximately 2800 square feet priced conservatively at $750,000-$900,000 dollars each, yields the following rough calculations and a description of the residential housing portion of the project envisioned on part of that land, i.e. for 650 homes total (150 "tribal" and 500 to be offered to the general the public:)

150 homes = total appraised value of $123,000,000 million dollars
500 homes = total appraised value $410,000,000 million dollars
Or a total appraised value for all homes of over $530,000,000 million dollars

The annual assessed value, even at the County's reduced valuation schedule, would place this housing tract subdivision (upon completion) at an assessable valuation of at least $132,000,000 million dollars or annual property tax receipts of over $5,000,000 million dollars payable bi-annually to the County. This does not include any other commercial development not properly disclosed in this "Cooperative "Agreement as required by 25 CFR 153.111 and 25 CFR 153 111 for any future development or any commercial uses that the tribe could undertake on this land once it is transferred to trust.