

**CAPPELLO
& NOËL** LLP
TRIAL LAWYERS

A. BARRY CAPPELLO

November 18, 2011

File No. 07005.001
194397.2

Via Overnight Delivery

The Honorable Elton Gallegly
United States House of Representatives
2309 Rayburn House Office Building
Washington, DC 20515-0523

Re: ***Proposed Chumash Fee-To-Trust Conveyance***

Dear Representative Gallegly:

We represent Preservation of Los Olivos ("P.O.L.O."), a grass roots citizen group in the Santa Ynez Valley of Santa Barbara County.

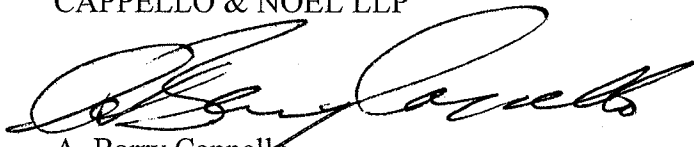
We understand that the Santa Ynez Band of Mission Indians (the "Tribe") intends to seek your support to have the United States accept the conveyance of certain land located in the Valley in trust for the Tribe. P.O.L.O. does not support the Tribe's "fee-to-trust" proposal, and requests that you consider the enclosed letters that explain P.O.L.O.'s position before you form your own position.

The first letter is from our office to the Santa Barbara County Board of Supervisors. The second letter is from the Office of the Governor of the State of California, written by Peter Siggins, who at the time was Governor Schwarzenegger's Legal Affairs Secretary and is currently an Associate Justice on the State of California Court of Appeal.

Thank you for your time and consideration. If you have any questions or comments, feel free to contact us.

Very truly yours,

CAPPELLO & NOËL LLP



A. Barry Cappello

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cc: Governor Jerry Brown
c/o State Capitol, Suite 1173
Sacramento, CA 95814

Santa Barbara County Board of Supervisors
105 East Anapamu Street
Santa Barbara, CA 93101

Enclosures

CAPPELLO
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A. BARRY CAPPELLO

September 6, 2011

File No. 09000.024
190132.1

Via Hand Delivery

Salud Carbajal, Supervisor
Janet Wolf, Supervisor
Doreen Farr, Supervisor
Joni Gray, Supervisor
Steve Lavagino, Supervisor
Santa Barbara County Board of Supervisors
105 East Anapamu Street
Santa Barbara, CA 93101

Re: *Proposed Chumash Cooperative Agreement*

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

We represent Preservation of Los Olivos ("P.O.L.O."), a grass roots citizen group in the Santa Ynez Valley.

We understand that the Santa Barbara County CEO has received, and intends to submit to you for approval, a proposed Cooperative Agreement (the "Agreement") between Santa Barbara County and the Santa Ynez Band of Mission Indians (the "Tribe").¹ The Board of Supervisors ("Board") would be violating the law and corrupting the planning process if it signed the Agreement.

Here is why:

Background

The Santa Ynez Reservation (135 acres) disputably² held in trust by the United States for the Tribe is not subject to State or County laws or regulation.

¹ On Friday, August 12, 2011, our office called the office of the Santa Barbara County CEO to request confirmation that the CEO had received the proposed Agreement and intended to pass it to the Board. As of this date, the CEO's office has not provided an answer to our request.

² See, e.g., *Preservation of Los Olivos, et al. v. Pacific Regional Director, Bureau of Indian Affairs*, U.S. Dept. of the Interior, Office of Hearings and Appeals, Interior Board of Indian Appeals, Docket No. IBIA 05-050-1.

The Reservation includes the Chumash Casino complex on Highway 246, which is near both residential and school property. Because the Reservation is exempt from County planning, the casino complex, and the impacts it engendered, were and are outside of County planning jurisdiction or control. Yet the County is obligated to provide services, including but not limited to police, fire, water, medic and other services to this mega complex.

In or about April, 2010,³ the Tribe acquired approximately 1400 acres of real property located along Highway 154 and Armor Ranch Road (the "Property"). This area is almost the size of the town of Solvang. The Property contains five parcels, all zoned agricultural. It is not contiguous to the existing Reservation property.

The Tribe contends that it may annex property via a "fee-to-trust" transfer in one of two ways: through the Bureau of Indian Affairs ("BIA") administrative process, or through federal legislation. The Tribe has encountered community resistance in its attempt to annex, through the BIA process, a separate property comprised of approximately 6.9 acres. Now the Tribe is seeking the Board's approval of this Agreement to avoid the BIA process. It intends to use the Board's approval for an alternative process such as (but not limited to) direct legislation to place the Property into trust, once approval of this proffered "Agreement" is received from the Board.

The Proposed Agreement

A copy of the proposed Agreement obtained by P.O.L.O. is attached hereto. In brief, it provides the Tribe will make Agreed Payments in an uncertain amount, and the County will support and assist the Tribe in its attempt to annex the Property by any possible method. In short, take money and ignore your sworn duty to uphold the law, specifically the Santa Ynez Valley Community Plan of this County.

The Agreement provides:

Recitals (page 1):

- the Tribe "desires to expand Tribal housing opportunities and operate Tribal economic development projects."
- "proposed and future Tribal development are not County projects and are not subject to the discretionary approval of the County . . ."
- "given the scope of the proposed Tribal housing and economic development projects, specific impacts are not always subject to precise measurement . . ."

¶ 3. "The County shall support the fee-to-trust annexation of the Property to the Reservation by federal legislation, the administrative process by federal agencies, or any other possible way in existence now or in the future. Upon request of the Tribe, the County shall confirm such support by letter or resolution." (Page 3.)

³ The Agreement apparently incorrectly recites that the purchase date was April, 2011.

¶ 5: “The Santa Ynez Band and County acknowledge and agree that in consideration for Santa Ynez Band’s Agreed Payments above, any additional impacts to the County, including, without limitation, law enforcement, fire, and traffic/roads, will be mitigated solely by the County at no additional cost to Santa Ynez Band.” (Page 4.)

Apparently the Agreement contemplates Tribe development of the Property, unhindered by County review or requirements, prior to the date the Property is annexed (if ever).

The Agreement Surrenders County Jurisdiction Over a City-Sized Property Already Subject to Specific Community Plan When the Anticipated Development Is Unknown and Adverse Impacts Cannot Be Assessed

On October 6, 2009, this Board adopted the Santa Ynez Valley Community Plan (“SYV Plan”), as an update to the County’s Comprehensive General Plan. Citizen involvement in the preparation of a community plan is required by State law, and is a cornerstone of the community plan process. The SYV Plan process took approximately nine years. It involved a concerted long-range effort by the community and the County which 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. (See, SYV Plan, pp. 5, 7.)

The SYV Plan augmented various elements of the County’s General Plan, including but not limited to, the Land Use Element goals,⁴ development policies,⁵ and Visual Resources Policies.⁶ The SYV Plan also augmented the Housing Element (“a comprehensive assessment of projected housing needs for all segments of the jurisdiction and all economic groups” [SYV Plan, p. 10]), as well as the Seismic Safety and Safety, Noise, Circulation, Conservation, Open Space, Agricultural, and Scenic Highways (“The Plan recognizes the suitability of design guidelines for protecting the scenic qualities of Highway 154 . . .” [SYV Plan p. 12]), Environmental Resources Management Elements, and the Clean Air Plan. (See generally, SYV Plan pp. 10-13.)

The SYV Plan specifically provides, among other things:

“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 developmental standards

⁴ One of the Land Use Element’s fundamental goals is the following: “Environmental constraints on development shall be respected. Economic and population growth shall proceed at a rate that can be sustained by available resources.” Another is that in “rural areas, cultivated agriculture shall be preserved . . .” (SYV Plan, p. 8.)

⁵ The Land Use Development Policies “establish guidelines for development in order to respect constraints posed by geology, biology, and other physical environmental characteristics. In addition, these policies require the availability of adequate services and resources to serve a project prior to development.” (See, SYV Plan, p. 9.)

⁶ The Visual Resources Policies “require structures to be compatible with the existing community and protect areas of high scenic value and scenic corridors.” (See, SYV Plan, p. 9.)

of the Plan or in the absence of a satisfactory legally enforceable agreement.” (Policy LUG-SYV-6, p. 22)

“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.” (Action LUG-SYV-6.1, pp. 22-23.⁷)

The Agreement would surrender County control over an area the size of a small town, at a time when the adverse impacts on the community and the necessary mitigation needs for the development are completely unknown and cannot be assessed. This requested abdication of your duty to uphold the planning process and the law, in favor of money, is abhorrent.

The Property is comprised of five agricultural zoned parcels which are currently enrolled in the County’s Agricultural Preserve Program under the Williamson Act, and also situated along a designated Scenic Highway. The Agreement apparently would enable those parcels to be developed in any residential/commercial manner, without compliance with SYV Plan requirements. It would remove from the County an unknown amount of tax revenue from the Property as ultimately improved and developed, while leaving the County with obligations to provide support services to the developed Property and to deal with unmitigated impacts at its own cost. As the Agreement has no provision for County discretionary control over development, it provides no legally enforceable means of ensuring consistent use, compatibility, or mitigation.

In short, the Agreement vitiates the SYV Plan, which this Board adopted after nine hard years of work. It does this with absolutely no knowledge of what the Tribe’s development plans might be. The Agreement does not provide any legally enforceable avenue for the County to promote/encourage/ensure issues of compatibility or mitigation. To the contrary: it provides that the County has no control over development of the Property. Either the signing of this Agreement, and/or recommending its contents to another governmental authority, violates your specific mandate under the SYV Plan as set forth above.

This Board Cannot Approve the Agreement

There are several major reasons why the Board cannot legally approve the Agreement.

First, because the Agreement is on its face inconsistent with the SYV Plan, the Board cannot approve it without first amending the plan. This Board is comprised of elected officials whose duty is to protect the public need for a “healthy, safe, and prosperous environment.” (See,

⁷ It is uncertain whether this Agreement, or a different agreement containing the necessary planning and environmental provisions, would be legally enforceable under all relevant law. (See, e.g., 25 U.S.C. § 81.) It is incumbent upon the Board to ensure that any agreement with the Tribe would be legally enforceable under all relevant law. This letter addresses initial problems related to planning, only, without waiver of any additional arguments, including but not limited to those related to enforceability under federal law.

e.g., Board Mission Statement, posted at www.countyofsb.org/bos.) As part of its task, the Board was statutorily required to prepare and adopt the comprehensive general plan, including numerous mandatory elements. (Govt. Code § 65300.) Pursuant to statute, this Board authorized and undertook the nine-year long process of developing the SYV Plan, including providing opportunities for the involvement of citizens, agencies, utilities, etc., through public hearings and other means. (See, e.g., Govt. Code §§ 65351, 65352, 65919 et seq.) It then adopted the SYV Plan by resolution in October, 2009, along with related ordinances. The SYV Plan now constitutes the law of this County which this Board must uphold.

As set forth above, the Agreement is flatly inconsistent with the SYV Plan. It cedes County jurisdiction entirely, blindly authorizes unlimited development, and does not create any legally enforceable document under which the County could obtain compliance with any of the SYV Plan requirements.

Second, because the Agreement exempts the Property from any compliance with the SYV Plan, it would, at the very least, constitute a *de facto* amendment to the SYV Plan. However, the statutes governing preparation and adoption of the General Plan are also applicable to amendments. (Govt. Code § 65350 et seq.)

As applied here, the Board cannot “approve” the *de facto* amendment unless it first undertakes the statutory procedure to amend the SYV Plan, and complies with the requirements for limited amendments. Thus, the Board must ensure that the Agreement/amendment is consistent with the General Plan (See, e.g., Govt. Code § 65300.5; *Families Unafraid to Uphold Rural El Dorado County v. Board of Supervisors* (1998) 62 Cal.App.4th 1332, 1336 (consistent if furthers the objectives and policies of the general plan and does not obstruct them).) The Board must obtain appropriate planning department and public involvement and notice under the statutes cited above. Indeed, in order for the public to understand the potential impacts of this Agreement/amendment, the County would have to provide notice of the assessed impacts. The Board would have to give notice that the Agreement constituted an amendment to the Plan when placing it on the agenda and as otherwise appropriate, and the Board would ultimately have to make findings of consistency.

However, the amendment process has not been invoked, and the requisite information on consistency is unavailable. The Tribe has not proposed any specific projects, so no one may assess whether this Agreement is consistent with the Plan or what impacts will result which would require mitigation. This Board cannot amend the Plan by fiat, nor can it subvert the process by failing to provide notice to the public on the amendment or its anticipated effect. Yet approval of the Agreement would do just that.⁸

Third, approval of the Agreement would unlawfully surrender control of the County’s ability to control lands within its jurisdiction. It is settled law that a county cannot

⁸ Under an analogous theory, adopting the Agreement would constitute an impermissible ad hoc exemption from Planning and Zoning Law. See, e.g., *Neighbors in Support of Appropriate Land Use v. County of Tuolumne* (2007) 157 Cal.App.4th 997 (county cannot adopt ad hoc exemption without rezoning or other proper procedure).

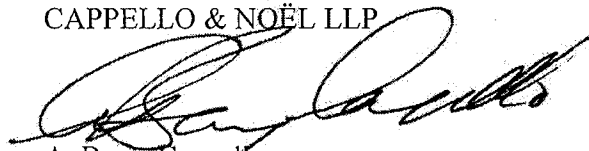
constitutionally divest itself of, or impair, its delegated governmental power, or contract away its right to exercise its police power in the future. (See, e.g. *County Mobilehome Positive Action Com., Inc. v. County of San Diego* (1998) 62 Cal.App.4th 727 (lease with rent stabilization measures conditioned on county refraining from enacting rent control legislation was facially unconstitutional); *Alameda County Land Use Assn. v. City of Hayward* (1995) 38 Cal.App.4th 1716 (City could not adopt a Memorandum of Understanding (“MOU”) with other cities and county where the MOU conditioned further amendments of a general plan on parallel amendments by other agencies); *Avco Community Developers, Inc. v. South Coast Regional Com.* (1976) 17 Cal.3d 785, 800 (government may not contract away its right to exercise the police power in the future).)

The Agreement would void the County’s ability to control land use on the Property in perpetuity. The County would be without any authority to influence development along Highway 154, a designated Scenic Highway and critical gateway to the community. The County would have surrendered its ability to control all land use issues: design, circulation, noise, density, etc.

The approval of this Agreement will result in the loss of millions of dollars of land value, harm unknown thousands of Santa Ynez Valley residents who rely on the planning process, and make a mockery of your careful deliberative process which culminated in approving the SYV Plan.

Very truly yours,

CAPPELLO & NOËL LLP



A. Barry Cappello

cc: Dennis Marshall
County Counsel
Santa Barbara County

Chandra L. Wallar
Santa Barbara County CEO

Enclosure

