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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 2010. 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,

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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