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October 25, 2017

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Re: Camp 4 - Memorandum of Agreement
Hearing on MOA - - October 31, 2017

Dear Supervisors Adam, Wolf, Hartmann, Lavagnino and Williams:

I live in Santa Ynez, California. Supervisor Joan Hartmann has repeatedly stated the proposed Agreement "is the product of challenging, intense negotiations with the Tribe." It is hard to imagine the negotiations being very challenging and intense when Supervisor Das Williams was at the negotiation table and negotiating with his largest political contributor (the Tribe).

The County has not responded to the Communities' questions about the Agreement:

Despite multiple representations by the County that the County would provide specific answers to questions raised by the community, the County has not adequately responded to the inquires from the community.

Conflict of Interest of Negotiator Das Williams and Negotiator Joan Hartmann:

The conflict of interest for Das Williams is obvious to any reasonable, moral and ethical person. I have itemized the substantial political donations from the Tribe to Supervisor Das Williams in a number of previous letters to the Board of Supervisors. Das Williams must recuse himself. Since Supervisor Das Williams donated at least $23,208.67 to Supervisor Hartmann's Campaign for Supervisor, one must wonder how effective was Supervisor Hartmann in negotiating on behalf of the local community, the environment and rural character of the Santa Ynez Valley as opposed to just going along with her major political contributor (Das Williams). Birds with the same feather flock together. The entire "tentative" agreement should be disregarded as it is tainted.

The County is panicking and acting out of fear and weakness:

The "tentative" Agreement is the product of, among other things, fear and weakness on the part of the County to fight for the environment, the community and the rural character of the Santa Ynez Valley. That is what distinguishes the Tribe from the County. The Tribe is a worthy opponent and the Tribe will fight for what is best for the members of the Tribe. The County on the other hand is not willing to fight for what is best for the members of the community and the environment. When things get difficult, the Tribe will stand and fight but the County is inclined to quit and abandon the environment and members of the community. The paltry payment of $178,500.00 per year does not begin to provide adequate compensation or offset for the harm the development of Camp 4 will cause the environment (as discussed below).

The "tentative" Agreement is worse than no agreement because the Agreement does **not** provide any significant benefit or certainty to the community. Many in the community do not share the County's fear and apprehension of allowing the matter play out in Congress and the Courts. What is the worse case scenario for the County? No agreement, H.R. 1491 gets passed and is held to be constitutional, the land goes into trust, and the Tribe builds on the land as it desires which it may have the right to do anyway once the land is in trust. What is the worse case scenario for the Tribe? H.R. 1491 does not pass, the U.S. Supreme Court holds in *Patchak v. Ryan Zinke, et al.*[1], that legislation like H.R. 1491 is unconstitutional, the federal court finds the BIA's decision was arbitrary, capricious, an abuse of discretion and/or otherwise not in accordance with law, and the land is taken out of trust. The County's panic mode and rush to finalize a bad agreement is not warranted.

If the parties let the matter play out in Congress and the courts, at least the parties can hold their heads up and say everyone tried their best and one side prevailed. At least that option avoids the obvious conflict of interest of a number of Supervisors and avoids agreeing to a development the County previously concluded violates the National Environmental Policy Act (NEPA), will negatively impact the environment and not preserve the rural character of the Santa Ynez Valley, among many other bad things as discussed below.

Which Alternative B "one-acre" development option will be implemented on Camp 4?

Hopefully Supervisor Williams and Supervisor Hartmann will share with the community at the hearing on October 31, 2017, which Alternative B "one-acre" development option is going to be implemented on Camp 4 (there are 8 options). The severity of the impact to adjacent communities will vary drastically depending on what option is implemented. After 6 months of "challenging" and "intense" negotiations, one would expect Supervisor Hartmann and Supervisor Williams to negotiate at least an understanding as to what development option has been selected. Unfortunately, to date no such option has been disclosed to the community. One has to question the negotiation tactics and reasons why the community is not informed about what development option will be taking place on Camp 4. The County would never agree to a development without knowing every detail of a proposed development. Here, the County is acting totally out of character and one must ask "why?"

What "set back" will be provided along Baseline, Armour Ranch Road and Linda Vista?

The County's "tentative" agreement provides for a 985 foot set back ("view shed protection zone") from SR-154. Why no agreed upon "set back" along Baseline Road, Armour Ranch Road

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[1] Oral argument in *Patchak v. Ryan Zinke, et al*., before the United States Supreme Court, is set for November 7, 2017.

and Linda Vista? One would assume both the Tribe and County would be agreeable to a reasonable set back along Baseline Road, Armour Ranch Road and Linda Vista. The failure of Supervisor Williams and Supervisor Hartmann to negotiate a reasonable "set back" along the above roadways is a clear example of the County's failure to protect the adjacent communities from excessive noise, development and traffic in close proximity to the above roadways.

Supervisor Williams is purportedly a "staunch advocate for open space." Why no agreed upon "open space" between Camp 4 development and Baseline Road, Armour Ranch Road and Linda Vista? Supervisor Williams was concerned about a 985 foot "buffer" between Camp 4 development and SR-154. What about a "buffer" between Camp 4 development and the adjacent communities? Is the County more concerned about the views for motorists driving at high speeds along SR-154 than the impact to communities adjacent to Camp 4 development? The "tentative" agreement provides no protection to the adjoining communities.

There is a lack of transparency, confidence and trust in the negotiation process and the Agreement:

How can anyone have any faith in the negotiation process and any "tentative" agreement when the negotiations were conducted in secret by individuals tainted and tarnished by large political contributions and the agreement is inconsistent with the position asserted by the County in federal litigation involving Camp 4 (as discussed below with verbatim quotes by the County). The "tentative" Agreement lacks transparency and credibility as the County is considering approving an agreement when the County does not know what "one-acre" development option is going to be implemented on Camp 4. What happened to the unimproved public roads and/or rights-of-way on Camp 4, i.e., Mora Avenue, San Marco Avenue, Riordan Avenue and Torrance Avenue? Did the County give those away as well?

The Agreement is contrary to what the County has asserted in federal litigation:

The County is considering approving a development the County repeatedly asserted in federal litigation violates the National Environmental Policy Act (NEPA), the proper environmental review was **not** performed, an Environmental Impact Statement was required and not performed, and that the BIA's decision to take the land into trust was arbitrary, capricious, an abuse of discretion and/or otherwise not in accordance with law. For example, the County discussed the following issues in a recent document filed in federal court (County's Memorandum of Points and Authority in Support of Temporary Restraining Order, filed January 28, 2017):

THE COUNTY IS LIKELY TO SUCCEED ON ITS CLAIMS.

THE BIA VIOLATED NEPA (Pg. 4);

1. The BIA Was Required to Prepare an EIS (Pg. 5);

2. The Final EA Failed to Meet the Requirements of NEPA (Pg.10)
- **a. The BIA Did Not Take the Necessary Hard Look (Pg. 11);**
- **b. The Mitigation Measures Were Inadequate (Pg. 12);**
- **c. The Cumulative Impact Analysis Was Inadequate (Pg. 14);**
- **d. Not All Viable Alternatives Were Analyzed (Pg. 15);**

3. The BIA Failed to Supplement its Environmental Review (Pg. 16)

No Agreement is Better Than the "Tentative" Agreement:

A "bad" agreement quickly jammed down the throats of the community by the County is not what the community wants or deserves. Unfortunately, that is what the County is about to do despite the community's strong opposition. The County's rushing to agree to a "bad" agreement for the sole purpose of reaching any agreement is politics as usual and the environment and rural character of the Santa Ynez Valley will be sacrificed. Despite comments to the contrary, the Agreement will not provide the County with more control than already exists.

The claimed urgency to immediately approve the agreement is disingenuous. Supervisor Hartmann's repeatedly stating "Congress is poised to rule" on H.R. 1491 is an unwarranted fear that does not justify entering into a "bad" agreement. Moreover, the County's agreeing to support H.R. 1491 is a further insult to the community and a clear example of the County not fighting for the community, the environment and the rural character of the Santa Ynezy Valley. H.R. 1491 is controversial legislation and the County should be opposing the legislation, not supporting it to the detriment of the community.

The Agreement Denies the Community of Its Legal Right to Challenge the BIA:

The County's position is disingenuous that "Supporting H.R. 1491 allows the County to have the agreement referenced in the federal legislation so Congress and the Department of the Interior officials have notice that a local agreement exists and the Tribe has waived its sovereign immunity with respect to it." The County's position insults the intelligence of the community. Congress and the Department of Interior can receive "notice" by simply sending them a copy of any agreement. The County does not need to "support" H.R. 1491 in order to give the federal government "notice" of any agreement or that the Tribe waived its sovereign immunity. The County can just as easily enter into an Agreement and **oppose** H.R. 1491.

The "tentative" Agreement's provision that the County support H.R. 1491 will deny members of the local community of their legal right to challenge in federal court the erroneous and illegal decisions of the BIA as H.R. 1491 attempts to legalized the illegal acts of the BIA. Federal law expressly provides members of the community with the right to challenge erroneous and illegal decisions of federal agencies. Does the County see anything wrong with supporting legislation that attempts to strip away the legal rights of the community? How badly does the County want to harm the community?

The Agreement Contradics the County's Prior Positions and the County Lacks Credibility and Loyalty to the Environment and Community:

The County has repeatedly made statements in official legal documents about the harmful impacts of the development of Camp 4. The County lacks integrity and credibility when it abandons its previous factually and legally sound positions. The County has tragically abandoned the environment and the local community. Set forth below are quotes of certain statements and representations made by Santa Barbara County in an official document recently filed in Federal District Court, commencing at page 6 (County's Memorandum of Points and Authority in Support of Temporary Restraining Order, filed January 28, 2017), with respect to the impacts of the proposed development of Camp 4:

> First, development of the Property would impact unique geographic considerations. Camp 4 would convert 1,227 acres of agricultural land (all but 206 acres for vineyard) to other uses. The conversion of agricultural land to other uses is of great significance to the State, region, and locality because agriculture provides economic and environmental benefits, as well as protects the recharging of groundwater basins, wildlife habitats, open space, and visual relief for residents. Such a conversion also fuels loss of surrounding agricultural uses. The

growth of urban development in agricultural areas brings land use conflicts that can increase regulatory costs and lead to trespass, vandalism, nuisance complaints, littering, and grass fires, which decrease farming potential and crop productivity. The division of agricultural parcels into smaller sizes likewise makes acreages less viable for agriculture in the future and leads to a cycle of urbanization by other landowners.

Second, development of the Property would violate numerous local laws and regulations that protect and promote the public health, safety, and general welfare of the residents and businesses of the County.

Third, the proposed development of the Property would threaten protected species and habitats. The selected development alternative would remove 50 oak trees on the property, which are protected and provide habitat to many other species. The removal would occur without proper mitigation, significantly impacting biological resources in the area.

Fourth, public services in the area would be impacted. The proposed development of the Property could result in at least 415 new residents to the area, as well as 800 event attendees per weekend.

As County expert staff pointed out during the comment period, adding 415 residents and 800 visitors a week requires: (1) the need for an additional one-half to one Sheriff's deputy in the area; (2) an increase in the need for fire and emergency response services; (3) an increase in water use in the area from the Santa Ynez Uplands Groundwater Basin, which basin is already in a state of overdraft; (4) an increase in the solid waste in the area; (5) an increase in traffic on the rural roads; and (6) an increase in projected student growth of approximately 22.78 elementary students, 15.73 middle school students, and 25.74 high schools students.

Fifth, the proposed action is controversial. "The term 'controversial' refers to cases where a substantial dispute exists as to the size, nature, or effect of the major federal action rather than to the existence of opposition to a use." Found. for N. Am. Wild Sheep v. U.S. Dep't of Agric., 681 F.2d 1172, 1182 (9th Cir.1982) (internal quotations omitted). Several parties, including several experts in their respective fields, disputed the findings of the Final EA. For instance, County Fire, the County Planning and Development Department, the County Public Works Department, and the Sheriff's Office disagreed with several of the conclusions in the Final EA. They opined that the Final EA was inadequate or incorrect as to its analysis of land use issues and impacts to traffic, water, waste, and public services, including law enforcement and fire services.

Several other experts disagreed with the Final EA findings as well. Biologist Lawrence Hunt opined that the oak tree mitigation program was inadequate and that impacts on the Vernal Pool Fairy Shrimp and other wildlife were not sufficiently addressed. The Audubon Society opined that the biological survey for the project was inadequate. The California Department of Fish and Wildlife opined that the residential development would modify the urban-wildlife interface and create edge effects to surrounding habitats and concurred with the County's recommended oak tree replacement ratio. Even the Final EA agrees that both of the project alternatives "would adversely impact water of the U.S., special-status

> species, protected oak trees, and migratory birds." With respect to water and traffic impacts, the Santa Ynez Rancho Estates Mutual Water Company found the analysis of water impacts flawed. The Santa Ynez River Water Conservation District, Improvement District No. 1, which supplies water in the area, found the water estimates for Camp 4 understated.
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> As to traffic, the California Department of Transportation ("Caltrans") advised the BIA that the traffic study supporting the EA was flawed and misrepresented the actual operating conditions. The traffic study used an incorrect minimum operating standard for Highway 154 and Highway 246, misapplied methodology outlined in the Highway Capacity Manual, and failed to address appropriate mitigation. Ultimately, Caltrans opined that the FONSI did not adequately address its concerns or the traffic impacts and did not fulfill the burdens of NEPA.
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> Finally, the proposed action would have adverse impacts. 40 C.F.R. §1508.27(b)(1). As discussed above, it would adversely impact agricultural resources, water, waste, traffic, schools, fire services, emergency and law enforcement services, and protected species, flora, and habitats. Further, it would impact visual resources. The proposed development is in a rural area with scenic roads where it will stand in stark contrast to it surroundings and likely preclude views of ridge lines, hillsides, and vegetation.
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> Based on the above, among other issues, the County likely will prevail on showing that the proposed action raises significant questions about its effect on the environment requiring an EIS and, therefore, that the BIA violated NEPA by failing to prepare one.

The above language is the County's language so there is no dispute as to the proponent of the statements. Was the County sincere when it made the above representations to the Federal Court?

In addition to the County's above described negative impacts, the County also set forth the following as to why the proper environmental review was **not** performed and why the BIA's decision to take Camp 4 into trust violated the National Environmental Policy Act (NEPA) and was arbitrary, capricious, an abuse of discretion and/or otherwise not in accordance with law:

> For all "major Federal actions significantly affecting the . . . human environment," NEPA requires an agency to prepare an EIS. 42 U.S.C. §4332(2)(C); 40 C.F.R. § 1502.3; 43 C.F.R. § 46.400. . . . . Here, the BIA failed to prepare an EIS despite evidence of the significance of its proposed action.
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> As to its context, the development of the Property will convert agricultural uses to residential, event, and tribal facility uses and bring a considerable addition of residents (415), employees (40+) and visitors (800 per weekend) to a rural area. As recent as 2009, that rural area was found lacking resources necessary to support such a development. Thus, the project is significant in context, requiring an EIS.
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> Further, the intensity of the project is significant. The acquisition and development implicate several of the intensity factors enumerated by the Council on Environmental Quality for consideration. In particular, the acquisition and development: (1) impact unique geographic characteristics; (2) threaten protective

> Federal, State, or local laws or requirements; (3) impact endangered or threatened species or their habitat; (4) impact public health and safety; (5) are controversial; and (6) have adverse impacts. 40 C.F.R. §1508.27(b). Degradation of one of these factors requires the preparation of an EIS. See Sierra Club v. U.S. Forest Serv., 843 F.2d 1190, 1193 (9th Cir. 1988). Several would be degraded by the acquisition and development.

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The Final EA failed to take a hard look at ecological, aesthetic, economic, social, and health impacts. For example, an underlying and major issue with the Final EA was that the BIA did not provide enough information about the basic components of the proposed developments, such as the full scope of the residential, including any accessory structures, or tribal facilities development. Without this information, the BIA and County lacked basic components of the project, including: (a) the number of new people that would be accessing the property for events or residing or staying on the property; and (b) the design, size and height of the residences for fire safety, visual impacts, and other factors. (Id.) The County and BIA thus could not properly analyze the impacts of the project.

The Final EA also fails to adequately address ecological impacts. For example, the Final EA summarily and wrongly concluded that the proposed development will be similar to other area developments. Thus, it did not adequately analyze the proposed development's compatibility with and impact on adjacent land uses. No other development bordering Camp 4 has one-acre residences, which is an urban development. Most parcels are required to be 100 acres. (Id. at Ex. H, Fig. 3-8.) Such an incompatible use would impact adjacent uses.

Further, the Final EA failed to properly analyze economic, social, and health impacts as it contained factual inaccuracies, conclusory statements, and improper assumptions in the analysis of fire protection and emergency medical services, law enforcement, traffic, and water. For example, several sections of the Final EA state that the County would provide emergency and structural fire protection services to the project area, despite there being no agreement in place to do so. (Id. at Ex. H, p. 3-68 to 3-69.) Similarly, the Final EA states that County Fire would provide wild fire protection services. County Fire does not have a contract to do so though. Also, as discussed above, the traffic study contains numerous errors. These inadequacies render the Final EA inadequate under NEPA.

Finally, the Final EA failed to properly analyze aesthetic impacts. For example, the Final EA does not describe or provide a rendering of the size, style or height of the proposed 143 residences or tribal facility. Yet the project is located adjacent to State Highway 154, and there is a scenic design overlay over and surrounding Highway 154.

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The mitigation measures contained in the Final EA do not provide the detail and discussion required to support a finding of no significant impact. For most of the resources, the mitigation measures simply list Best Management Practices without a discussion of their effectiveness or ability to reduce a specific impact to an insignificant level. (Id. at Ex. R.) Likewise, the "protective" mitigation measures identified in the Final EA provide no data regarding their effectiveness or how they mitigate a particular impact.

> In addition, for those mitigation measures that provide some detail, they do not sufficiently minimize or avoid the impacts. For example, the mitigation measures discussing funding and contractual mitigation of fire and law enforcement services discuss entering into new agreements with the Sheriff and Fire. Likewise, with traffic impacts, the Final EA stated that the Tribe will contribute a fair share for traffic improvements, which does not alleviate the impact. For the removal of oak trees, the Tribe proposes to mitigate the loss with replacement at a no net loss ratio. The County requires a 15:1 replacement ratio to account for the less than 100% survival rate and mitigation of lost habitat until the trees mature. The Department of Fish and Game agreed that the County's replacement ratio should be used. For water resources, the mitigation measures do not address any mitigation other than prohibiting turf watering during declared drought emergencies, which does not even consider the impacts independent of a drought. Further, it is insufficient during drought conditions in which significant water restrictions may be imposed on surrounding properties.
>
> Further, the impact analysis did not fully consider the casino and Reservation development, nor other foreseeable tribal developments in the area. Until responding to comments on the Final EA in the FONSI, the BIA did not mention the 6.9 acres of land in the Valley approved to be taken into trust for the Tribe by the BIA or other proposed trust acquisitions in the area. Thus, the increase in patrons from that project could not have been analyzed in the Final EA, which could be significant. On the 6.9 acres, the Tribe plans to develop a Tribal museum, cultural center, and 27,600 square foot commercial retail facility, a commemorative park, and 100 parking spaces.
>
> Likewise, the BIA did not analyze the need for increased public service and resources impacts due to the significant casino expansion on the Tribe's Reservation, which will add 215 hotel rooms and over 500 parking spaces and thus many more people to the area. For instance, the traffic study in the Final EA indicates the casino expansion was not addressed by the cumulative impacts analysis, and further confirms the 6.9 acres was not addressed. In short, the record falls far short of properly analyzing the cumulative impacts of the project under NEPA.

Again, the above language is the County's language so there is no dispute as to the proponent of the statements. Was the County sincere when it made the above representations to the Federal Court?

The County's selling out the environment and community for the paltry sum of $178,500 per year is a disgrace:

The County's own language above clearly describes the drastic negative impacts caused by the proposed development of Camp 4. The paltry sum of $178,500 per year does not begin to compensate for the harm caused to the environment and the rural character of the Santa Ynez Valley. Moreover, the manner in which the above sum was arrived at has not been disclosed. The amount is a further example of the failure of the County to protect the environment and rural character of the Santa Ynez Valley.

The County's Tentative Agreement violates the California Environmental Quality Act:

As discussed above, Santa Barbara County has repeatedly asserted and alleged the proper environmental review of the proposed development of the approximately 1,433 acres of Camp 4

was **not** performed. The County's agreeing to allow the development of Camp 4 as described above without a proper environmental impact statement is a violation of the *California Environmental Quality Act* (CEQA).

As you know, CEQA is a self-executing statute. Public agencies are entrusted with compliance with CEQA and its provisions are enforced, as necessary, by the public through litigation. The residents of the Santa Ynez Valley request Santa Barbara County fulfill its obligations under CEQA and require the proper environmental review the County has repeatedly asserted must be performed to comply with the *National Environmental Policy Act* (NEPA).

The "tentative" Agreement should not be approved:

It is respectfully requested the Board of Supervisor **not** approve the "tentative" agreement as it is a "bad agreement" because it does not protect the environment and the rural character of the Santa Ynez Valley and it does not adequately compensate for the harm the proposed development will cause the environment and it deprives members of the community of their legal right to challenge improper decisions of the federal government relating to the fee-to-trust process.

Please post this correspondence on the County's website in connection with the Board of Supervisor's meeting on October 31, 2017.

If you have any questions concerning this matter, please do not hesitate to contact me at BrianKramerLaw@aol.com or my office at 1230 Rosecrans Avenue, Suite 300, Manhattan Beach, California 90266, Tel. (310) 536-9501.

Very truly yours,
Brian Kramer
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