CAPPELLO
& NOËL LLP
TRIAL LAWYERS

A. BARRY CAPPELLO

October 30, 2017

Via Hand Delivery

Joan Hartmann, Supervisor
Das Williams, Supervisor
Janet Wolf, Supervisor
Peter Adam, Supervisor
Steve Lavagnino, Supervisor
Santa Barbara County Board of Supervisors
105 East Anapamu Street
Santa Barbara, CA 93101

Re: Proposed Memorandum of Agreement
With the Santa Ynez Band of Chumash Indians
BOS File Number 17-00756

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

We represent San Lucas Ranch, LLC the owner of over 9,000 acres of ranchland adjacent to Camp 4 that will be negatively impacted by development the agreement allows. The San Lucas Ranch property, which originally encompassed Camp 4, has been owned and worked as agricultural land by the same family for almost 100 years.

The proposed agreement with the Santa Ynez Band of Chumash Indians ("Band") is not in the County's or the community's best interest. But more importantly, you lack authority to enter the agreement because it does not comply with land-use regulations, including the Santa Ynez Valley Community Plan ("Community Plan"). *See, e.g.*, *Summit Media LLC v. City of Los Angeles* (2012) 211 Cal.App.4th 921, 937 (agreement that does not comply with regulations is "invalid and unenforceable."). It is therefore an illegal agreement that will be voided when challenged in court.

You cannot avoid the agreement's illegality by rushing to approve it and make it effective. When inevitable disputes arise, the Band, like any competent party to a litigation, will raise your lack of authority to void the agreement. You have admitted repeatedly since 2013, as described below, that the intended development does not comply with the Community Plan and other regulations. It will therefore be easy to prove your lack-of-authority to enter the agreement.

831 STATE STREET, SANTA BARBARA, CALIFORNIA 93101-3227 ABC@CAPPELLONOEL.COM
TEL (805) 564-2444 FAX (805) 965-5950 WWW.CAPPELLONOEL.COM

You should vote no on this agreement to protect yourselves and the County. If you believe that the agreement is in the County's best interest, you can then seek authority to approve it by following the process required to amend the Community Plan through full community involvement and environmental analyses. Until the Community Plan is amended you cannot enter the agreement.

You Have Admitted Repeatedly that the Development Violates Land-Use Regulations

If you approve this agreement, the lawsuit to invalidate it will be simple. The governing question will be whether it "further[s] the objectives and policies of the general plan and not obstruct their attainment." *Orange Citizens for Parks & Recreation v. Superior Court* (2016) 2 Cal.5th 141, 153. Any action that conflicts with the regulations "is invalid at the time it is passed." *Id.* (quoting *Lesher Comm'ns v. City of Walnut Creek* (1990) 52 Cal. 3d 531, 544). The County and its lawyers have already admitted repeatedly that the development, and therefore the agreement, is incompatible with the Community Plan. The following quotations, taken from letters and filings by the County and its lawyers, prove that the County recognizes the incompatibility and, therefore, that the agreement is invalid.

You have, for instance, admitted explicitly that the development is "incompatible" the County's General Plan and Community Plan:

- "The proposed development is <u>incompatible</u> with the County's General Plan, Santa Ynez Community Plan, and County land use regulations." County's Oct. 31, 2013 letter at 3 (emphasis in original).

- "As stated in its comments on both the Fee-to-Trust Application and Final EA, such a development contravenes rural area policy countywide and *is incompatible* with the County's General Plan, Santa Ynez Community Plan, and County land use regulations." County's Jan. 2015 Notice of Appeal at 10 (emphasis added) (citing County's July 2014 Comments on EA at 9-14, 16-22, 30-32 and County's Nov. 2014 Comments on FONSI at 9-13).

- The "development . . . *is incompatible* with the County's General Plan, Santa Ynez Valley Community plan, and County land use regulations." County's Dec. 2015 Appeal at 8 (emphasis added).

- "As discussed above, the development of 143 homes and a 12,000 square foot tribal facility with 250 parking spaces is incompatible with County land use plans and inconsistent with surrounding open space, agricultural, and ranch uses." County's Jan. 2017 Motion for Temp. Restraining Order at 19.

These admissions are sufficient to prove that the agreement does not comply with the General Plan or Community Plan. But they are buttressed by your further admissions that specific aspects of the development violate specific aspects of the General Plan and Community Plan. We focus below on just two such aspects, protection of agricultural land and limitation of urban sprawl.

The Agreement Does Not Preserve and Protect Agricultural Land

The Community Plan compels you to preserve and protect agricultural land, through goals, policies, and "unequivocal directives":

> **Policy LUA-SYV-2**: "Land designated for agriculture within the Santa Ynez Valley shall be preserved and protected for agricultural use." Community Plan at 73; *see id.* at 14 ("'**Shall**' indicates an unequivocal directive").
>
> **Agriculture**: "In rural areas, cultivated agriculture shall be preserved. . . ." Community Plan at 8
>
> **Goal LUA-SYV**: "Protect and Support Agricultural Land Use and Encourage Appropriate Agricultural Expansion." *Id.* at 73
>
> **Policy LUA-SYV-1**: "The County shall develop and promote programs to preserve agriculture in the Santa Ynez Valley Planning Area." *Id.*
>
> **Policy LUA-SYV-3**: "New development shall be compatible with adjacent agricultural lands." *Id.*

You admitted the importance of agricultural land to the Federal Government, stressing that County and local regulations require that agriculture be protected:

> Agriculture in California is valued as an economic and environmental benefit to the people of the state, nation, and world. . .. In light of its importance, the County prioritizes its preservation in planning documents and regulations: [list and relevant quotes from County Comprehensive Plan]. . .. Agriculture is similarly important at the community level. In the Santa Ynez Valley, agriculture is a strong component of community identity and a major contributor to the economy, including cattle grazing and wine production [cites to Community Plan EIR]. The Santa Ynez Valley also specifically identifies preservation of agriculture as a planning and regulatory goal: 'Agriculture should be preserved and protected as one of the primary economic bases of the Valley.' (Santa Ynez Valley Community Plan at p. 10.)" County's July 2014 Comments on EA at 10-12.

You also stated repeatedly that the proposed development fails this requirement. By way of example:

- "*Camp 4 is inconsistent* with current Agricultural zoning, the County zoning ordinance, and other County Codes such as the Agricultural Buffer and Grading ordinances." County's Oct. 2013 Comments on EA at 16; County's Jan. 2017 Motion for Temp. Restraining Order at 6-7.

- "Camp 4's proposed high-density residential development in the middle of an exclusively agricultural community and Tribal Facilities in Alternative B are *not compatible with agriculture*." County's July 2014 Comments on EA at 43 (emphasis added).

- "The proposed one-acre lots in Alternative B, as well as the Tribal Facilities *are in no way compatible with the existing land uses*." County's July 2014 Comments on EA at 44 (emphasis added).

- "The proposed acquisition of [the] land would convert the agricultural uses to residential, event, and tribal facility uses. The loss of agricultural land is of great significance to the State, region, and locality, as agriculture provides economic and environmental benefits to the public" and "protects the recharging of groundwater basin, wildlife habitats, open space, and visual relief for residents." County's Jan. 2015 Notice of Appeal to IBIA; County's Jan. 2017 Motion for Temp. Restraining Order at 6.

- "The trust acquisition and proposed development would implicate unique geographic considerations such as conversion of prime agricultural farmland, would threaten land use and regulatory requirements imposed for the protection of the environment and community" and would have "known negative impacts" on "on and off-site agricultural resources, including loss of grazing operations, urbanization of agriculture land, and compatibility with adjacent agricultural properties." County's Complaint at 11-12.

- "In addition to the direct loss of agricultural land, a high-density residential development and Tribal Facilities would pose problems to preserving neighboring agriculture. The project could cause trespassing, vandalism, nuisance complaints, and decreased farming potential or loss of crop productivity." County's July 2014 Comments on EA at 17 (citing Santa Barbara County Land Use & Development Code).

The Development Impermissibly Expands Urban Development

The Community Plan, also directs that you "shall" limit urban development to the Santa Ynez, Los Olivos, and Ballard urban boundaries, which "shall" be the limits of urban development, and which "shall not" be extended except as part of an update of the Community Plan. Community Plan at 22. These requirements are also enshrined in the County's General Plan:

> **Urbanization**: "[T]o sustain a healthy economy in the urbanized areas and to allow for growth within its resources and within its ability to pay for necessary services the County shall . . . prevent scattered urban development." Community Plan at 8 (quoting General Plan).
>
> **Land Use**: "Future residential development should not be located on prime food producing or pasture land, but close to existing public services. The beauty of the land should be preserved by limiting urban sprawl and creating buffer zones to maintain the individual character of each town." Id. at 8 (quoting Comprehensive

As with preservation of agricultural land, you admitted repeatedly that the proposed development violates these requirements:

- "Camp 4 is comprised solely of rural, agricultural lands. . .. Both development alternatives would result in the conversion and urbanization of large amounts of those lands to residential subdivision. . .. The loss of agricultural land would total 1,227 acres. Further, the historical and current cattle grazing operations on the project site could be totally eliminated." County's July 2014 Comments on EA at 16-17 (citations omitted).

- "The development of 143 residences and an over 12,000 square foot tribal facility with parking for 250 cars would constitute a significant change in the current land use that is inconsistent with surrounding uses; it would be considered an urban development in the middle of a rural area." County's Dec. 2015 Appeal to ASIA at 8.

- "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." County's Jan. 2017 Motion for Temporary Restraining Order at 6; *see also* County's Nov. 2014 Comments on FONSI at 9; County's Dec. 2015 Appeal to ASIA at 12.

These are just a few examples of the times you admitted that the development does not comply with the Community Plan and other governing regulations. The almost 300 pages of documentation you filed opposing the development since 2013 include many more such examples, such as how the development ignores the Community Plan's resource adequacy requirements. *See e.g.*, Community Plan at 9 ("Economic and population growth shall proceed at a rate that can be sustained by available resources"), 10 ("Planning for the Valley should be geared to the concept of living with the resources available locally."), 75-157 (specific requirements for resource adequacy); County's July 2014 Comments on EA at 45-49 (explaining ways in which development ignores resource adequacy requirements); County's Nov. 2014 Comments on FONSI at 13-22 (same); County's Jan. 2017 Motion for Temp. Restraining Order at 7-8 (same).

These admissions, which you cannot ignore, prove that the proposed agreement is indisputably incompatible with the Community Plan.

Your Ability to Negotiate Agreements Does Not Allow You to Enter this Agreement

The law and the Community Plan limit your ability to enter agreements to settle disputes. Your general ability to conduct litigation and settle matters is constrained by the requirement that any resulting settlement comply with your other legal obligations. Just as you could not, as part of a settlement, approve siting of an opium den, you cannot settle a case by approving any other land-use that violates land-use regulations. *See, e.g.*, *Summit Media LLC v. City of Los Angeles* (2012) 211 Cal.App.4th 921, 937 (government cannot enter agreement that "exempts settling parties from ordinances and regulations that apply to everyone else and would, except for the agreement apply to the settling parties.").

Similarly, the Community Plan requires that any agreement you enter that takes land out of your jurisdiction must, *inter alia*, encourage compatibility with the surrounding area and mitigate environmental impacts to the County. In the absence of such an agreement, you are unequivocally directed to "oppose the loss of jurisdictional authority." Community Plan at 22-23.

As described above, you have admitted that the agreement is generally incompatible with Community Plan and the surrounding area. You have further admitted that the description of the residences to be built "do not provide the necessary analysis to determine similarity with other developments—such as the number of lots with residential homes in each area and the size of those homes and lots. Further, they are inaccurate." County's July 2014 Comments on EA at 44. You therefore cannot make the requisite finding that the agreement encourages compatibility with the surrounding area.

You have similarly admitted that the agreement's mitigation measures do not "provide adequate protection" because they do not sufficiently minimize or avoid impacts to land resources, water resources, air quality, biological resources, or public services. *See* County's Jan. 2015 Notice of Appeal to IBIA at 14-15 (citing County's July 2014 Comments on EA at 35-

40, County's Nov. 2014 Comments on FONSI at 25-27). Proving the illusory nature of the mitigation measures, as you have explained, they generally refer vaguely to "Best Management Practices" and provide no data regarding their effectiveness or ability to mitigate any impacts. *Id.* at 15; County's Jan. 2017 Motion for Temp. Restraining Order at 12-14; County's July 2014 Comments on EA at 35-40; County's Nov. 2014 Comments on FONSI at 25-27. Without this information, you cannot find that the agreement mitigates environmental impacts.

The enclosed complaint and request for a temporary restraining order that we filed last week provide additional details on why you cannot enter the agreement. The procedural grounds on which the Court denied our motion for a temporary restraining order will be obviated if you vote to approve the agreement. We are therefore prepared to seek a new temporary restraining order if you approve the agreement. We will of course seek all available relief if you take steps to make the agreement effective or implement its terms (*e.g.*, signing the agreement, sending a letter to the U.S. Congress, dismissing your lawsuit) before our renewed temporary restraining order is heard.

The issue of your authority ought to be resolved before you commit yourselves and the County to the terms of this agreement.

Very truly yours,

CAPPELLO & NOËL LLP

A. Barry Cappello

cc: Michael Ghizzoni
County Counsel
Santa Barbara County
Via email: mghizzoni@co.santa-barbara.ca.us

Amber Holderness
County Counsel
Santa Barbara County
Via email: aholderness@co.santa-barbara.ca.us

Mona Miyasato
Santa Barbara County CEO
Via email: cao@co.santa-barbara.ca.us; cvanwingerden@co.santa-barbara.ca.us

Enclosures