Santa Ynez Valley News

There can be no “Agreement” with the tribe

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Well-intended people have recently advocated that the community compromise with the Chumash tribal government and forge an “agreement” related to the annexation and/or development of Camp 4.

The first problem with this proposal is that it relies on the highly questionable premise that the tribe has some right to annex additional property. This is an unproven tribal assertion, and is the subject of current litigation. It has been challenged by the state of California, protested by the county of Santa Barbara, and litigated by local community groups.

The second problem is that while reaching an agreement sounds nice, in this rare and unusual case involving annexation and tribal sovereignty it is not possible — it is merely a pleasant fantasy. The essential ingredients of an agreement (i.e. contract) do not exist.

Under the law, an agreement requires both sides to give and get something; it requires enforceability, and an available remedy. However, federal law allows recognized tribes to claim sovereignty and evade responsibility for what they promised to give.

The result is that the hoped-for agreement is an illusory contract based on an unenforceable promise — and there is no remedy.

The pattern is that the tribal government asks for what it wants up front, and in return offers a nice-sounding future promise. Then, if they choose not to deliver on their promise, they invoke tribal sovereignty to evade enforcement.

Here are two real-world examples from which we must learn:

> In 2005, against the advice of the community, the Santa Barbara County Board of Supervisors agreed not to appeal the Bureau of Indian Affairs’ approval of a 6.9-acre annexation in return for the tribal government’s signed commitment to enter into a future binding and enforceable contract related to long-term use of the property.

After the deadline for the county’s appeal had passed, the tribal government walked away from the agreement they had signed. The county got nothing: No appeal, no agreement on future use, and no recourse.

> In 2004 the Department of the Interior took land into trust for a San Diego-area tribe based on their representation that it was for tribal housing. (Sound familiar?) When the tribe instead built a massive five-story parking structure for their casino, the community vigorously complained about the bait-and-switch.

Assistant Secretary for Indian Affairs Carl Artman (He was the lead speaker at the tribe's recent meeting on annexation) wrote to those people's congressman, defending the tribe's action: "... current land acquisition regulations in 25 CFR Part 151 do not authorize the Department to impose restrictions on a Tribe's future use of land which has been taken into trust. ... In addition, the Department has been reluctant in the past to take any action to eliminate the flexibility that Indian tribes enjoy to change the use of trust lands. ..."

In other words: Tough. At the Department of the Interior, we let tribes do whatever they want.

This abnormal inability to forge a binding agreement has nothing to do with whether or not the parties trust each other — other parties that don't trust each other enter into enforceable contracts in America every minute of every day. Ever buy a used car?

But in this case involving a tribal government, federal law and policy eliminate the ability for our community to enter into an enforceable agreement.

Everyone involved in discussions regarding annexation issues — particularly decision-makers — should resist the warm-and-fuzzy temptation to believe there can be some agreement.

That fantasy has very unpleasant real-world consequences.

"Community Matters" explores local topics of public interest. Retired businessman Bob Field is president of his neighborhood's mutual water company and past chairman of the Valley Plan Advisory Committee.