

**Mr. Bill Krauch**  
**Santa Ynez Valley Coalition Testimony on H.R. 1491**  
**before the**  
**Senate Committee on Indian Affairs**  
**April 25, 2018**

**Introduction & Overview**

Thank you Chairman Hoeven and Vice Chairman Udall for holding this hearing today and providing us the opportunity to testify on H.R. 1491, a bill we strongly oppose because of its significant adverse effects to the community in the Santa Ynez Valley of California. I also want to especially thank our Senators, Senator Feinstein and Senator Harris, for their commitment to ensuring that this legislation receives close examination and thoughtful consideration. While this is a California-specific measure, all Committee members need to understand that this legislation's endorsement of an abuse of the fee-to-trust process could very well set a national precedent and lead to an avalanche of similar requests for Congress to intervene in fee-to-trust requests in Members' home states.

I am Bill Krauch, the Chair of the Santa Ynez Valley Coalition and a resident of the valley for the past 36 years. The Santa Ynez Valley Coalition is a local citizen's advocacy group whose members have worked for years to preserve the undeveloped and agricultural areas around Santa Ynez from over-development. The mission of the Coalition is to ensure that Santa Ynez Valley residents have a strong voice in land use decisions affecting our water, environment, public safety, and economy. Our education and outreach efforts focus on the need to maintain local control of land use in our community, a principal at grave risk if H.R. 1491 is enacted.

Our members – many lifelong neighbors and friends of the Chumash – are strongly supportive of the Tribe’s efforts to better address their housing and community facility needs. However, whatever steps that are taken should be done in a manner consistent with existing local land-use planning guidance and regulations which every other property owner in the County must comply. Numerous Administrations have been before this Committee in recent years to implore action to reform the fee-to-trust process to protect the jurisdiction rights of local communities, and we join them in that call. Congress is ill equipped to insert itself as zoning commissioners in communities with tribal interests.

### **Background & History**

To better understand our concerns about the impacts of H.R. 1491, some context is in order regarding the land which would be placed in trust for the Chumash, and how it may be developed in a way inconsistent with the community’s wishes. The Santa Ynez Valley – located in central Santa Barbara County between the Santa Ynez and San Rafael Mountains - has a population of just over 20,000 with its small towns linked by rural roads weaving through fertile farmlands, ranches, and open space. The Los Padres National Forest, home to the condors, overlooks this Valley, as does President Reagan’s beloved Rancho Cielo. The local economy in the Valley revolves around agriculture and tourism and its land use plan restricts building heights and prohibits commercial box stores and fast food restaurants.<sup>1</sup>

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<sup>1</sup> Santa Ynez Valley Community Plan, October 2009 - [http://longrange.sbcountyplanning.org/planareas/santaynez/syv\\_cp.php](http://longrange.sbcountyplanning.org/planareas/santaynez/syv_cp.php)

One-mile northeast of the Town of Santa Ynez lies Camp 4, a 1,400-acre parcel of open space and agricultural land – the land that the Tribe wishes to put into trust via H.R. 1491. As you cross through the San Marcos pass in the Santa Ynez Mountains on Highway 154, Camp 4 is the gateway to the Santa Ynez Valley. It features the largest aquifer in the area as well as supporting wildlife and plant species that are important to conserve, with its variety of habitats including grasslands, oak savannas, and riparian. In fact, much of the Camp 4 parcel is presently covered by “Williamson Act Agreements” which are state-enforced contracts entered into with local landowners to keep land in agricultural use or to conserve it as open spaces. It is presently zoned as such to allow a density of only one house per 100 acres.

In 1998, Camp 4 was purchased by a private landowner, the former TV star Fess Parker, and he sought to up-zone the property to increase development density so that he could build a large resort and additional residential units. He was denied that rezoning repeatedly by Santa Barbara County, who believed that such a use was highly inconsistent with the local, lightly travelled roads and surrounding agricultural lands. In 2004, Parker and the Chumash jointly announced a plan to place Camp 4 into “trust” and make it part of the reservation to circumvent these local land use restrictions. If successful, this scheme would have allowed Parker’s vision of massive development on Camp 4 to become a reality. However, after this announcement the proposed partnership was never finalized.

In 2010, the Tribe purchased Camp 4 from Parker’s heirs for \$44 million and shortly after that, commenced efforts to have the federal government take the land into trust on their behalf. In June 2013, the Pacific Regional Director of the Bureau of Indian Affairs

(BIA) approved the Tribe's application for a Tribal Consolidation Area (TCA) covering 11,500 acres within which the 1,400-acre Camp 4 parcel is located. If enacted, this TCA would have significantly reduced the standard of review of the Tribe's development plans for Camp 4 and all lands within the TCA. Later that year, faced with appeals and public protests, the Tribe withdrew its application for the TCA which the BIA dismissed without prejudice. However, the BIA nonetheless then improperly and illegally used these reduced standards to analyze the Chumash's fee-to-trust application for Camp 4. As a result, Santa Barbara County, members of the Santa Ynez Valley Coalition, and other local organizations and individuals all legally challenged the BIA's actions in this regard.

While the County and community were still in the process of exercising our rights to appeal the BIA's actions, our right to appeal was unceremoniously stolen from us in the waning hours of the Obama Administration in the dark of night. The BIA approved the Chumash fee-to-trust application notwithstanding the strong local opposition and without a sufficient record to make a final decision. In doing so, the BIA denied due process for the non-Indian communities and residents adversely impacted by potentially unregulated land use on an expanded Chumash reservation. This action vitiated pending administrative appeals of affected communities, organizations and residents who were following the current laws to have their point of view heard. Despite this action, the current Administration is still reviewing the matter and has refused to publish a final decision in the Federal Register, which is one reason why the Chumash are here asking the Congress to over-ride the process the Congress itself put in place to adjudicate such matters.

The Coalition is now supporting litigation in federal court challenging the BIA's approval of the Chumash's Camp 4 fee-to-trust application. The suit asserts that the Department of Interior's decision to take this action was based on an insufficient analysis of its environmental and other impacts as required by the federal law. If this suit prevails in Court, the decision to take Camp 4 into Trust will be reversed, and the federal government will be required to undertake a more thorough analysis of the impacts of this action.<sup>2</sup> H.R. 1491 would also dismiss these appeals, further disenfranchising the citizens of the valley.

### **Reasons to Reject H.R. 1491**

We strongly believe that absent significant changes, the Committee should not support this bill. It is a product of a badly flawed negotiating process between the Tribe and Santa Barbara County where the Board of Supervisors was effectively bullied into signing a weak, fiscally irresponsible memorandum of agreement (MOA) whose limited restrictions sunset in just over two decades.

The Committee will no doubt hear much about this MOA between the County and the Chumash from the bill's proponents. They will assert that its mere existence should justify the Senate passing this bill with no changes. Do not be fooled by these claims. This agreement is lopsided and short-term, and likely sets in motion an eventual over-development of Camp 4 in a manner that Fess Parker proposed two decades ago.

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<sup>2</sup> Detailed Camp 4 history - <http://syvcoalition.com/wp-content/uploads/2018/04/Camp-4-Timeline.pdf>

The Committee should carefully examine the back-story about this agreement and the evolution of the County's position so it can judge for itself whether it represents a meaningful agreement between the County and the Chumash.

Before last year, Santa Barbara County was a staunch opponent of both the redevelopment of this land at all, and the Camp 4 fee-to-trust application. In fact, the County was so strongly opposed it testified in opposition to similar legislation in the previous Congress and filed both administrative and judicial challenges against the BIA Camp 4 fee-to-trust decision. However, in the fall of last year, all of that changed.

As the Chair of the Board repeatedly stated during several public meetings in 2017, House Congressional leaders effectively demanded that the County sign an agreement with the Tribe or they would enact H.R. 1491 with few restrictions on the Tribe's use of Camp 4. Hence, the County was forced to accept a deal of far too limited duration, with anemic payments for utilities and other infrastructure related to Camp 4 that is a fraction of their actual cost and which would in no way replace the lost tax revenue from the parcel being placed into trust.

These were NOT good faith negotiations – evidenced by the fact that the MOA now requires the County to only advocate for a version of H.R. 1491 that includes the MOA – a gag order that shows how lopsided this framework is. This condition alone shows why our Coalition must now speak for the vast majority of the Valley's residents who oppose the MOA as now crafted and who vigorously oppose this bill in its current form.

While the MOA does limit the development on Camp 4 through 2039 to 143 houses on one-acre improved lots and a community center, and even permanently bans gaming on Camp 4, it does not address the broader fee-to-trust problem in the Santa Ynez Valley nor does it address the expansion of gaming in the rest of the Valley.

### **Proposed H.R. 1491 Fixes to Address Community Concerns**

The leaders of the Santa Ynez Valley Coalition have spent thousands of hours studying the MOA and speaking to our neighbors in the Valley about their views on its contents. From those conversations, we see a handful of issues that are insufficiently addressed in the MOA and H.R. 1491 that show how flawed they really are and which must be corrected to resolve the development of Camp 4 in a way that the community and the Tribe can live in relative harmony.

#### **1. Address the Tribe's Housing & Community Facility Needs - But Not on Camp 4**

The Tribe has legitimate needs for housing and community facilities, but they are best addressed on smaller, but more than adequate parcels of land better suited to safely accommodate these needs. After filing for fee-to-trust status for Camp 4, the Chumash purchased approximately 369 acres near Camp 4 that is a superior alternative because:

- It satisfies the stated needs of the Tribe for 143 homes on one acre improved lots and a 30 acre tribal center which would consume about 200 acres of the parcel, virtually separated only by a 2 lane roadway;
- It is physically closer to the existing reservation;

- It is adjacent to existing town infrastructure and would be an extension of existing residential development areas versus “leapfrogging” to Camp 4;
- It is located so that the County would probably grant zoning thereby avoiding the fee-to-trust process on that parcel altogether;
- It lowers building cost to the Tribe versus a development spread out over 1,400 acres; and
- It is bounded by two major highways, versus two rural roads adjacent to Camp 4, thereby providing superior ingress and egress.

We would respectfully request that the Committee and tribe consider these other, more suitable options closer to town for the tribal housing and community facility needs that would prevent fracturing the undeveloped 1,400 acres of Camp 4.

## **2. Extend the Length of the Agreement**

As currently configured, the restrictions contained in the Tribe/County MOA will expire in 2040, approximately 22-years from today – even though most homeowners secure 30-year mortgages. Presumably, the Tribe is then allowed to do anything it wants on Camp 4 except gaming, including building a massive additional amount of commercial and residential development, as it proposed in a public meeting in March 2016 – a plan very similar to that first proposed by Fess Parker.

As such, the Coalition strongly recommends any action on H.R. 1491 include a provision that continues the use restrictions for Camp 4 contained in the MOA beyond 2040 until subsequently changed by a future Congress. If the Tribe says its intention for



Camp 4 is only 143 houses on one-acre improved lots and a tribal center, we should take the Tribe at its word and make that use permanent. Stability of local land use values and preservation of the Valley's fundamental character and quality of life are only protected with a far longer term of land use restriction than the current 2040 date.

### **3. Insufficient Protection of the Valley's Water Supply**

We are very concerned that the agreement is unclear about what water rights are conveyed to the Tribe from this legislation and that this issue must be clarified if H.R. 1491 is to help avoid substantial litigation over these rights in the future. Camp 4 sits on the Valley's major aquifer. The Valley has suffered from severe drought for a number of years as attested to by devastating wildfires earlier this year and has as a result imposed water use restrictions on residents.

The Tribe's current hotel and casino facilities nearby are already the largest users of local water in the Town of Santa Ynez and H.R. 1491 does not limit water use to that which would support the 143 homes on one-acre improved lots and tribal center or prohibit the export of water to other Tribal-held lands. While the Non-Intercourse Act limits off reservation water marketing unless approved by the Department of Interior, the reserved water rights or Winters doctrine is less clear in what uses a Tribe can exercise so long as the water supports "the purpose of the reservation." Agricultural use is presumed under Winters, but other uses such as commercial, domestic and municipal activities are generally permitted here too.

Suffice it to say that the precedent setting framework embodied in H.R. 1491 must be clarified to guarantee that ranchers and farmers and other homeowners in the Santa Ynez Valley have access to this precious commodity to maintain their livelihood. The legislation must clarify these rights and prevent a compromised position for the thousands of local residents who will not live on the Camp 4 parcel.

#### **4. Third Party Enforcement of the MOA**

Under the Chumash-County MOA, and the terms of H.R. 1491, Santa Barbara County is the only party that can enforce its terms on behalf of the County's citizens. Inspections to determine compliance are to be done by third parties hired and paid by the Chumash, a mechanism fraught with potential conflicts of interest. The County's severe financial position – well documented by the Board of Supervisors in virtually every public meeting they hold - makes it unlikely they will spend scarce resources on legal help to compel the Tribe's adherence to the terms of the MOA or any subsequent restrictions. Given this fact and the County's weak negotiating posture over the last year, the Coalition believes H.R. 1491 – if it advances - must be altered to allow third party enforcement of the County's obligations to enforce the agreement. We do not seek with this request to interfere with the terms of the County's agreement with the Tribe, only to make sure that the Tribe lives up to its obligations to ensure the restrictions on Camp 4 are enforced.

#### **5. Prevent a Gaming "Bait and Switch"**

While H.R. 1491 permanently prohibits gaming on Camp 4, it does not prevent expansion of gaming by the Chumash. We believe that the bill should prohibit a "bait and

switch” where existing houses are demolished on the present reservation after homes are built on Camp 4 or elsewhere, and that land is then used to build a second casino or significantly expand the existing one. H.R. 1491 has been widely advertised by its proponents as having absolutely nothing to do with gaming. Unfortunately, the bill as drafted could lead to a dramatic expansion of this activity despite the fact that the Valley already struggles with the crime, drug trafficking, public health challenges, traffic congestion and other public safety issues associated with the current gaming facility.

### **What’s Really Needed - Fixing the Broken Fee-to-Trust Process**

No one has to remind this Committee that there are serious problems with the existing fee-to-trust program as authorized by the Indian Reorganization Act. This program is in pressing need of reform, according to the testimony before this Committee by numerous recent Administrations. Bills have been introduced, and hearings held. The current Administration has stated to you recently that it is presently debating recommendations to reform the process.

In our own back yard, the Western Regional Office of the BIA approved every fee-to-trust application from 2001 through 2011 - acting as little more than a rubber stamp for California Tribes and in the process and ignoring the legitimate concerns of local communities.<sup>3</sup> We believe strongly that the process must be transformed to ensure a balance between tribal and neighboring community interests – to avoid frivolous

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<sup>3</sup> Waples, Kelsey. "Extreme Rubber-Stamping: The Fee to Trust Process of the Indian Reorganization Act of 1934." *Pepperdine Law Review*, 2012, 101-53. <http://syvcoalition.com/wp-content/uploads/2018/04/Pepperdine-Law-Review-Waples-Apr12.pdf>.

obstructive tactics but simultaneously guarantee that fee-to-trust applicants abide by rules that protect our natural resources like water and avoid leaving local taxpayers to foot the bills for traffic congestion and other public infrastructure. We believe strongly that the Camp 4 trust acquisition is an abuse of the fee-to-trust process and that if a more neutral analysis were undertaken of it, other more suitable options would be identified that would enable the tribe to address its housing and community facility needs with much-reduced impacts to the surrounding community and environment.

Abuses of the fee-to-trust program such as what is occurring in the Santa Ynez Valley hurt the program for ALL tribes that have legitimate needs to increase the land base of their respective reservations. We believe that further consideration of H.R. 1491 should be suspended until fee-to-trust reforms are considered by Congress and the Administration.

### **Conclusion**

In closing, thank you for the opportunity to share our views. As we stated at the outset, enactment of H.R. 1491 in its current form represents a dangerous erosion of the ability of local governments to engage in meaningful land planning, the consequences of which will spread far beyond the Santa Ynez Valley. Additionally, we understand and recognize that the Chumash are our neighbors, and we are committed to helping them address their housing needs. All we are asking is the same thing that is asked of every non-tribal resident in the Valley, to help us conserve its character and resources for all future generations.