

Testimony of Santa Ynez Band of Chumash Indians  
Chairman Kenneth Kahn  
To the Senate Committee on Indian Affairs Re: HR 1491  
April 25, 2018

Mr. Chairman, Mr. Vice Chairman, Members of the Committee, thank you for the opportunity to appear before you today. I am proud to be here representing the Members of the Santa Ynez Band of Chumash Indians in support of H.R. 1491, the Santa Ynez Band of Chumash Indians Land Affirmation Act of 2017.

This legislation ratifies the actions taken by the Department of the Interior to place land in trust for our Tribe. If enacted, it will allow us to expedite the construction of 143 homes for tribal members and descendants, and will provide us with a much needed land base to protect and grow our cultural heritage.

I want to begin by providing a brief history of how we got here. The context is important, and should give you a good lens with which to view this legislation.

The Santa Ynez Band of Chumash Indians is the only federally recognized tribe of Chumash heritage. Our Chumash people historically inhabited the California coast from Paso Robles in the North, to Malibu in the South. The Chumash were the first California Indians encountered by the Spanish explorer Juan Cabrillo when he landed in what is now the City of Ventura, California in 1542.

Like many California Indians, we were forced into Spanish missions for generations, destroying much of our culture, confiscating our lands, and decimating our population.

Following the Mission era, in 1906, the United States provided our tribe 99 acres in a swampy riverbed in Santa Ynez, California. We subsequently voted to organize under the Indian Reorganization Act in 1934.

Even while most of the reservation lacked running water and electricity, the Tribe secured several HUD grants in the 1960s and 1970s to build housing for our members. Today, those renovated 50-year-old HUD houses remain the only housing on our reservation. As a result, only 17% of our tribal members and descendants live on tribal land.

After Congress passed the Indian Gaming Regulatory Act, our Tribe elected to take advantage of the opportunity. We entered into a compact with the State of California, and have run a successful gaming operation for almost 20 years.

Like many tribes, gaming was a catalyst. It provided us the resources to rebuild our government and our culture.

By 2010, the greatest need in our community was tribal housing. As I mentioned, only a fraction of tribal members and descendants live on tribal land, and with no space left to construct new houses, we knew that we needed to acquire more land.

We were fortunate to find a landowner just down the road from our existing reservation that was willing to sell us land that was a part of our original land grant from the Catholic Church, clearly within our aboriginal territory. When we purchased the roughly 1,400 acres known as Camp 4, we committed to our members that each family would have a land assignment on tribal land once Camp 4 was taken into trust.

Before even attempting to place the land in trust, we approached our community. We know there are often misunderstandings about tribal lands, and we wanted to put our plans out in the open. We even went so far as to propose a cooperative mitigation agreement with the County before beginning the legislative or administrative avenues for placing the land in trust.

Sadly we were met with resistance. Some in the community questioned our motives and made false accusations about our plans for the land. It was frustrating. No, we don't want to build a new casino just a mile away from our existing casino. No, we didn't want the land in trust so we could export the water.



To be candid, some of what was said was extremely disappointing.

We heard wild, baseless allegations such as the Tribe was not a political jurisdiction eligible for government-to-government negotiations. We were told that it is inadvisable for sovereign tribal trust lands to exist in America. Some even asserted that our Chairman was a Mexican, not a Native American.

After more than a year of sharp, baseless criticisms, it was clear that our good faith effort to resolve local issues prior to beginning the Fee to Trust process had failed. So, in July 2013 we filed the Administrative fee-to-trust application for Camp 4.

Not surprisingly, our opponents immediately filed suit opposing the action. Knowing this group would use the administrative and legal appeals process to delay our application for as long as possible, we also sought to place the land in trust via an act of Congress.

Tribal leaders also redoubled our efforts to reach an agreement with those who would work with us, starting with the County Sheriff Department. The Tribe had developed a wonderful relationship with our Sheriff through years of joint programs and jurisdictional cooperation, and we believed we could negotiate with them in good faith.

Our faith was well-placed. The Chumash Tribe and Sheriff Bill Brown entered into a new cooperative agreement that improved public safety in the region by having the Tribe provide funding for a new police cruiser and four deputies (that has now grown to six deputies) at a cost of more than \$1 million each year. These deputies didn't just serve the Reservation, they responded to emergencies all across Santa Barbara County. Next, we moved on to the Fire Department, and secured an agreement in which the Tribe contributes more than \$1 million each year to improve County-wide emergency services for our community.

Those two agreements came as we began to see movement on both the administrative and legislative fee-to-trust routes.

In late 2014, the Bureau of Indian Affairs Sacramento Regional Office issued a Notice of Decision regarding the Department's intent to accept the Camp 4 land in trust. The Department had determined that the tribe's application met the criteria for federal acquisition, and in accordance with federal regulations, proposed accepting the land for the benefit of the Tribe.

However, once again, our neighbors chose litigation over cooperation. The Department of the Interior was sued more than half a dozen times over their decision, including by the County of Santa Barbara.

Fortunately, in early June 2015 the House Resources Committee's Subcommittee on Indian Affairs held a hearing on an earlier version of this legislation. This marked a turning point.

Upon Congressional examination, the weakness of the opposition's position came to light. For House Resources Committee Members, who routinely deal with issues dealing with Native American Tribes, the issue was black and white. The Tribe proposed taking land in trust, proposed development that was consistent with the surrounding community, and attempted to mitigate impacts even though that step was not required by federal law. This should have been an open-and-shut case—and Committee Members said so in no uncertain terms.

That hearing was a real wake up call for the County of Santa Barbara. For too long, the County had allowed a vocal minority within the community to steer the official County position. When the details were examined by a neutral third party, the error in their ways became clear.

And to the County's credit, they responded positively. Promptly after we returned from the hearing in Washington, the County reached out and expressed an interest in re-examining their position. We happily agreed to come back to the negotiating table. Our leadership knew that neither the Tribe nor the county were going anywhere, so it was in both of our best interests to find ways to get along.

After some discussion, the County and Tribe initiated the Ad Hoc Subcommittee Regarding Santa Ynez Valley Band of Chumash Indians Matters on August 15, 2015. The group was made up of two Members



of the Board of Supervisors and two members of the Chumash Business Committee. I have served on this committee since its inception, first in my capacity as Vice Chairman, and since April 2016, as Chairman of the Tribe.

Like any negotiation, there were fits and starts. Sometimes we hit fundamental disagreements, and talks slowed to a trickle. Sometimes there were bursts of progress when we made a breakthrough. Many were skeptical, but I am proud to say we got there. On October 31, 2017, after 22 public meetings and hundreds, if not thousands, of public comments, the Tribe and the County entered into a binding mitigation agreement for development on our Camp Four lands.

The agreement stipulates that the Tribe will build 143 housing units, and a small Tribal Meeting Hall/administrative building. Under the agreement the vast majority of the property will be protected as agricultural land or environmental open space. And we agreed to fairly compensate the County for the services it provides in the area.

Under the terms of the agreement, the County dismissed its lawsuit against the Department of the Interior. The County also agreed to support the Legislation being considered here today.

I would like to take a moment to recognize the County's representatives who are in the audience today—since we turned the corner, they have really been wonderful partners. In particular, I want to recognize the singular leadership of Supervisor Joan Hartmann, who represents our Supervisorial District, Chaired the Ad Hoc Subcommittee, and served as Chairwoman of the Board of Supervisors until this year. Supervisor Hartmann was a force to be reckoned with, and I want to thank her for her personal efforts and commitment to getting us to where we are today.

I will return to some of the specifics of our agreement in a moment, but I want to briefly underscore an important point: we entered into this agreement because it was the right thing to do—not because we were forced to do so.

In the midst of our negotiations with Santa Barbara County, the Department of the Interior placed our lands in trust. On January 19, 2018, Acting Assistant Secretary-Indian Affairs Larry Roberts completed our Fee-to-Trust process and dismissed the pending challenges against the action. Secretary Zinke subsequently upheld this action in the new Administration.

We had already won; there was no need for the agreement, according to many of my members.

But tribal leadership was committed. We hoped that by going through with negotiations, we could improve relations in the valley and set a road map for how we work with the County on future projects.

Looking back now, I believe that was the right decision. Our agreement demonstrated to many in the Community that good faith negotiations between the County and the Tribe are possible, and that they can be fruitful. I also believe that our decision to work with the County even after our land was placed in trust is a big reason why we have such strong support for the bill.

On that note, Mr. Chairman, I would ask that following the conclusion of my remarks, the Committee accept several key statements of support from Santa Barbara County, our local Congressman, Salud Carbajal, and the bill's sponsor, Representative Doug LaMalfa. I would also ask that the committee include comments in support of the agreement from Former Congresswoman Lois Capps, Former Supervisor Doreen Farr, and more than two dozen other local leaders, chambers of commerce, labor groups, environmental organizations, and other community members.

I will be the first to acknowledge that not everyone is happy with this agreement. As you will hear from Mr. Krauch, some of our neighbors are still unhappy, even after all of the concessions we made willingly.

They have every right to raise concerns, and I am glad that they did. Mr. Krauch and others brought up a number of tough issues, and because of the open, transparent public hearing process, we were forced to respond to their comments. More importantly, we made changes to the



agreement based on their concerns. Don't take my word for it. Look back to our initial offer to the County nearly ten years ago; I think it is clear as day that we made substantial concessions to the community.

It is worth mentioning a few of the more substantive concerns that were raised, and how we addressed them in the agreement referred to in Section 2 of the legislation.

Gaming is often cited as a major concern with fee-to-trust applications across the country. Our application was not, is not, and will never be for gaming. It is about housing. That is why the only component of the agreement that lasts in perpetuity is the prohibition on gaming. The tribe does not feel that this was a major concession—our existing gaming facility is less than two miles down the road. It would make no sense to build a new casino on this land, so we were happy to take that off the table. As you will notice, this was done in Section 3(g) of the bill.

Concerns about land use were, without question, the most common issue raised prior to the formal negotiations with the County and throughout the public process. Sovereign tribal land is not subject to county zoning ordinances, and this really got under the skin of some of the no-growth community members. But as members of the Santa Ynez Valley community, we share many of the goals of our neighbors. We don't want high density multi-family urban-style development. And we certainly don't want to spoil the bucolic scenery of the valley.

That's why the agreement with the County puts reasonable restrictions on what and where the Tribe can build. We voluntarily limit our construction projects to 143 homes, and a tribal hall/administrative building. The rest of the land will be open space, remain in agricultural production, or be actively managed to maximize environmental benefit for the region.

The size of the buildings we construct will be limited, as set forth in the Environmental Assessment that we submitted to the Department of the Interior. The agreement simply requires us to follow our original plans.

Moreover, in an effort to address concerns about preserving the rural character of the Valley, the Tribe agreed to develop the Camp 4 property

in a manner that was less dense than the neighboring housing development. We propose 143 homes on our 1,427-acre property, while our neighbors in the Rancho Santa Ines Estates development have 137 homes across 1,058 acres.

A few of our more creative opponents have raised the concern that the Tribal Hall and Administrative building will be used to throw large parties. Nothing could be further from the truth. Events are limited, per the enforceable environmental assessment document. And, as with all tribal government facilities on our reservation, tribal law prohibits the consumption of alcohol. In reality, the 12,000 square foot space—which are coincidentally about the size of some of our neighbors' homes—will be used for offices, and to hold tribal council meetings, youth education events, and traditional/cultural events.

Another common concern we heard was that by placing the land in trust, the County loses out on tax revenue. This is true, and we set out to make it right.

We asked the County to quantify the cost of services provided; after a thorough review, they requested \$178,500 annually for the life of the agreement (until 2040). We felt this was fair, and happily agreed to the request. As such, in Section III, 9(d), on page six of our agreement, the Tribe agrees to provide the County with these payments.

Water was another important concern we heard. Some accused us of just wanting the land to sell the water during the drought. This was absurd, of course, because we need to use the water for housing. But we addressed the concerns none the less. Under the terms of the agreement, the new development will be water neutral during drought years. We will accomplish this by removing up to 50 acres of the existing agriculture on the property and by recycling all wastewater. It is also worth noting that the Indian Non-Intercourse Act prohibits the removal of water from tribal trust lands without express statutory authorization. So, to export water off the reservation we would require subsequent legislation from Congress.

The last concern was also among the most frustrating. Many that opposed the agreement claim that it is not enforceable in a court of law.



While the Santa Ynez Band of Chumash Indians is a federally recognized Indian Tribe that has sovereign immunity, Section V of the agreement includes a limited waiver of that immunity based on our enforceable gaming compact with the State of California. Put simply, if the Tribe fails to up hold its end of the deal, the County has legal remedies to address our failure.

I have just run through a sampling of the issues that came up during the many months of public hearings, open dialogues, and Congressional consideration of this bill. There are many more issues that were raised, and each one received a written answer that is posted on the Santa Barbara County Board of Supervisors webpage (<https://www.countyofsb.org/tribal-matters.sbc>) .

In conclusion, I want to thank the Committee once again for the opportunity to be here today. The bill will expedite much needed housing for our tribal members and will set a precedent that good faith negotiations between tribes and local governments will be rewarded.

Thank you Mr. Chairman, and I look forward to answering any questions you may have.