



BOARD OF SUPERVISORS
AGENDA LETTER

Agenda Number:

Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Department Name: HCD
Department No.: 055
For Agenda Of: 5/4/10
Placement: Departmental
Estimated Tme: 30 minutes on 5/4/10
Continued Item: No
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors
FROM: Department David Matson, Director, Housing and Community Development
Director(s)
Contact Info: David Matson (568-2068)
SUBJECT: Santa Ynez Valley Tourism Business Improvement District

County Counsel Concurrence

As to form: Yes

Auditor-Controller Concurrence

As to form: N/A

Recommended Actions:

That the Board of Supervisors:

- a. Receive a report on the potential formation of the Santa Ynez Valley Tourism Business Improvement District.
- b. Consider the adoption of a Resolution of Consent of the County of Santa Barbara supporting the City of Solvang's establishment of the Santa Ynez Valley Tourism Business Improvement District that would include part of the unincorporated area of the County.
- c. If the Board adopts the Resolution of Consent, approve a Notice of Exemption pursuant to County's California Environmental Quality Act Guidelines, citing CEQA Guidelines Sections 15060(c)(3) and 15378(b)(4).

Summary Text:

This item is being placed on the Board agenda to consider a request by the City of Solvang that the County adopt a Resolution of Consent (Attachment A) to allow lodging establishments in portions of the unincorporated area to participate in the Solvang's proposed Santa Ynez Valley Tourism Business Improvement District (SYVTBID). A boundary map and description of the proposed SYVTBID is included as Attachment B. Upon receipt of the Santa Ynez Valley Hotel Association's petition to form the SYVTBID, the City of Solvang agreed to serve as the lead agency and proceeded to adopt two resolutions at its March 22, 2010 meeting, which were required by law¹ in order to establish the district. The first was a Resolution of Intention to establish the Santa Ynez Tourism Business Improvement

¹ §§ 36600-36671 of Streets and Highways Code, Div 18 - The Property and Business Improvement District Law of 1994

District (Attachment C). The second was a Resolution Requesting Consent of the City of Buellton and the County of Santa Barbara “to create the SYVTBID and to grant the City of Solvang Council jurisdiction for all purposes in connection with creation and operation of the proposed SYVTBID” (Attachment D).²

Background:

The purpose of the SYVTBID is to create a five-year revenue source that would be used to augment existing marketing, sales and promotional efforts in order to increase the allure of Santa Ynez Valley as a tourist, meeting and event destination. Over the last 5 years, similar TBIDs have been successfully implemented in approximately 45 jurisdictions throughout the State to improve tourism and increase occupancy local lodging establishments. Based on signatures received on the SYVTBID petition circulated by the Santa Ynez Valley Hotel Association, 73% of the lodging establishments in Solvang, 68% of the lodging establishments in Buellton, and 71% of the lodging establishments in the surrounding unincorporated area are in favor of the formation of the district. To facilitate the overall operations of the SYVTBID, the Santa Ynez Valley Hotel Association (SYVHA) drafted a Management District Plan (Attachment A, Exhibit A), which sets forth the proposed boundary of the SYVTBID, a service plan and budget, and a proposed means of district governance. Review of SYVHA Management District Plan, along with the City of Solvang’s legislative documentation form the basis for the recommendations contained in this staff report.

Scope of the Proposed SYVTBID

The proposed SYVTBID would include all existing and future hotels, motels, and inns available for public occupancy with the boundaries of the cities of Buellton and Solvang, as well as surrounding portions of the unincorporated area of Santa Barbara County between Los Alamos and the San Marcos Pass. In total, the SYVTBID boundary would currently include thirty-four (34) lodging establishments, nine (9) of which are in the unincorporated County. If the SYVTBID is formed, a supplemental assessment in the amount of \$2 would be levied per occupied room–night and would be in effect for a period of five years beginning August 1, 2010.

SYVTBID Formation, Process, and Expected Outcomes

TBID formation requires submittal of petitions from lodging business owners representing more than 50% of the total annual assessment followed by a City Council hearing and an opportunity for a written protest. If there is a majority written protest, the TBID cannot be formed. The City of Solvang has volunteered to be the lead jurisdiction. Prior to the City Council hearing scheduled for May 11, 2010, the City of Buellton and the County will consider resolutions of consent to the City of Solvang to form the TBID. If formed, each jurisdiction will be responsible for collecting the assessments and remitting TBID-related funds to the City of Solvang. The City of Solvang will then, under the provisions of the SYVHA Management District Plan, transfer the TBID-related funds to the SYVHA. The SYVHA will have the sole responsibility of managing the TBID programs as provided for in the Management District Plan and will be required to provide regular programmatic updates to the City of Solvang. An annual service plan and budget will be developed and approved by the SYVHA Board to distribute funding.

² City of Solvang Resolution No. 10-846 passed and adopted March 22, 2010.

SYVTBID revenues are projected to be \$600,000 annually, or \$3 million through 2015. As currently proposed, the SYVHA will take 13.3% (\$80,000) to cover the costs of its administration and operations. Participating jurisdictions are allowed to retain 1% of the TBID revenue to offset the administrative costs associated with the collection and distribution of the assessment. As noted, there are nine hotels including a total of 153 rooms in the unincorporated area that would be assessed within the SYVTBID. Assuming current average occupancy rates (58%), lodging businesses in the unincorporated area of the County would produce approximately \$65,000 in annual TBID-related assessments.

The SYVHA Management District Plan indicates that this revenue would significantly increase their investment in promoting tourism, which would result in an increase in occupancy rates. Staff concurs that additional revenue dedicated to the promotion of the local tourism industry would positively impact the regional economy, as tourism is one of the biggest economic sectors in the County. The economic impacts could include, but are no limited to:

- projected changes in room-night occupancy of participant lodging businesses,
- increases in sales tax revenue,
- increases to Transient Occupancy Tax (TOT) revenue, and

This assertion remains speculative, however, given that the Management District Plan provides little information on these specific outcomes. Accordingly, staff was not able to forecast the economic impacts associated with increased overall tourism in the greater Santa Ynez Valley that accrue as a result of this innovative approach to revenue generation offered by the SYVTBID.

Potential Areas of Concern

In addition to the lack of clarity regarding program outcomes, staff has also identified the following broad policy concerns:

- The 1% administrative offset provided to the County does not appear to cover the costs associated with the collection and distribution of the assessment. Given projected room nights, the County Treasurer-Tax Collector will only receive approximately \$650 to process over 32,000 assessments each year.
- Several sections of the Bylaws of Santa Ynez Valley Hotel Assn, Inc. (Bylaws) are blank, therefore the extent of the powers granted to the SYVHA remains partially unknown.
- According to the Bylaws, the distribution of representation on the SYVTBID Board of Directors is weighted toward the cities. The lodging businesses in the unincorporated County will have only two directors, while lodging business within the City of Solvang will have three and the City of Buellton two.
- Increased promotion by the SYVHA of the Santa Ynez Valley and Santa Barbara wine country is specifically designed to increase tourism and events throughout the region. There is no question that this increased market visibility can lead to economic growth supportive of local businesses, and, in turn, community programming. Yet, while this growth may generate increased sales tax and TOT revenue for the County, it may also add service costs or produce adverse impacts that could impact the quality of life to other residents and businesses in the area.

- Given the vast amount of unincorporated territory included in the District map, while speculative, there is potential that the TBID, and its specialized focus, could encourage further development of existing lodging businesses, or the sitting of new businesses, within in the unincorporated portions of the SYVTBID. There are a vast range of pros and cons associated with those property-owner investment decisions, and in any scenario, the regulatory environment currently in place will both describe and govern that potential for development.

Further, staff also considered implications related to the legal framework:

- Federal courts have analyzed when the use of compelled assessments for industry promotional campaigns violates the First Amendment. Although individuals cannot be compelled to subsidize a private message with which they disagree, that prohibition does not apply to financial support of the government's own speech. (*Johanns v. Livestock Marketing Assn.*, 544 U.S. 550, 553 (2005).) Even when a promotional campaign involves nongovernmental sources, the speech is exempt from First Amendment scrutiny where the message of the promotional campaigns is "effectively controlled" by the government. (*Johanns* at 560.) Use of compelled assessments for promotional campaigns is clearly defensible when "the government sets the overall message to be communicated and approves every word that is disseminated." (*Johanns* at 561-562.) The Ninth Circuit Court of Appeals also has upheld using compelled assessments to fund generic advertising when the government has advance power over specific messaging, but where that power is structured as less than word-for-word control. (*Paramount Land Co. LP v. California Pistachio Commission*, 491 F.3d 1003, 1010-1011 (2007); *Delano Farms Co. v. Susan Neill Co.* 586 F.3d 1219, 1228-1229 (2009).) The Ninth Circuit has cautioned courts against "micro-managing" government oversight approaches for generic promotional campaigns. (*Paramount Land* at 1012; *Delano Farms* at 1230.) The documents provided to the County with the proposed Santa Ynez Valley Tourism Business Improvement District, however, do not presently describe any of the government oversight approaches that have been upheld by a reviewing court.
- A number of other issues were raised by staff related to the application of provisions of the Property and Business Improvement District Law of 1994 in the California Streets and Highways Code, Sections 36600 et seq. After consultation with City of Solvang and SYVHA staff, many of the issues related to the Streets and Highways Code have been resolved. For example, Section 36640 states that the City Council may, by resolution, determine and declare bonds that shall be issued to finance the proposed improvements, if the resolution of formation adopted pursuant to that section provides for the issuance of bonds. Staff's concern was satisfied by item #10 of the City of Solvang's resolution declaring its intention to establish the SYVTBID, which indicates that bonds will not be issued. However other issues are outstanding, including Section 36651, which requires that the lead city contract with the designated nonprofit corporation to provide services. To date, staff has not received documentation regarding the contractual relationship, which would detail the specific organizational and governance parameters between the participating jurisdictions and the SYVHA.

Given these concerns, staff does not recommend adoption of the Resolution of Consent in its current form. That recommendation should not overshadow the fact that the program generally has significant merit and could go far to support the economic interests throughout the region. If the concerns outlined above were addressed by the City of Solvang in cooperation with the SYVHA, County staff would be more likely to recommend that the Board support the City by adopting the Resolution of Consent. However, when Staff requested the opportunity to consider revised language in

accompanying materials, the SYVHA indicated that the City of Solvang would consider final adoption no later than May 11, 2010 as funding for program development had expired. Consequently, only those jurisdictions that have adopted a Resolution of Consent by May, 11, 2010 can be included in the District map. Accordingly, if the Board of Supervisors does not adopt the Resolution of Consent on May 4th, the nine lodging businesses in the unincorporated area would be excluded from the SYVTBID. It is important to note that exclusion from the SYVTBID may create a competitive disadvantage for lodging businesses in the unincorporated area as neighboring lodging businesses would have access to increased promotion and marketing. This lack of equilibrium may result in a disproportionate increase in the market share that would accrue to the Cities of Buellton and Solvang. As County staff was preparing to docket this Board Agenda on the evening of April 27th, the City Manager of Solvang and SYVHA provided last minute draft changes to the Management District Plan and a cover letter (Attachment E) indicating that the City intends to consider adopting those draft changes at its Council Meeting of May 10, 2010. If adopted, those changes would structure government oversight of the proposed SYVTBID within one of the approaches that have been upheld by a reviewing court.

Fiscal and Facilities Impacts:

Budgeted: No

Fiscal Analysis:

Narrative: The proposed assessment rate is \$2 per occupied room night and would be in effect for a period of five years. The assessment is expected to generate \$3 million over the proposed five-year lifespan of the SYVTBID. Each jurisdiction would be responsible for collecting the assessment and forwarding funds to the City of Solvang. Solvang would then forward the funds to the SYVHA, which is responsible for the fiscal oversight and operations of SYVTBID programming. To offset the administrative costs of collection, the County would be entitled to retain 1% of the SYVTBID revenue collected from lodging establishments in the unincorporated area. Because this is not sufficient to cover the costs associated with processing 16,000 new assessments, the County will incur additional costs in the Office of the Treasurer/Tax-Collectors.

Staffing Impacts:

Legal Positions:

NA

FTEs:

NA

Special Instructions:

Attachments:

- A. Resolution of Consent of the County of Santa Barbara to Create Santa Ynez Valley Tourism Business Improvement District
 - Exhibit A: SYVTBID Management District Plan (April 16, 2010)
- B. Proposed Boundary Map and SYVTBID Boundary Description
- C. Resolution of Intention to establish the Santa Ynez Tourism Business Improvement District

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- D. Resolution Requesting Consent of the City of Buellton and the County of Santa Barbara “to create the SYVTBID and to grant the City of Solvang Council jurisdiction for all purposes in connection with creation and operation of the proposed SYVTBID”
- E. April 27, 2010 Letter from City Manager Brad Vidro and Revised SYVTBID Management District Plan
- F. Notice of Exemption pursuant to County’s California Environmental Quality Act Guidelines, citing CEQA Guidelines Sections 15060(c)(3) and 15378(b)(4).

Authored by:

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cc:

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