



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: 5/25/10  
Placement: Departmental  
Estimated Time: 30 minutes on 5/25/10  
Continued Item: Yes  
If Yes, date from: May 4, 2010  
Vote Required: Majority

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



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**County Counsel Concurrence**

As to form: Yes

**Auditor-Controller Concurrence**

As to form: Yes

**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:**

On May 4, 2010, the Board considered 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 Solvang's proposed Santa Ynez Valley Tourism Business Improvement District (SYVTBID). Due to several outstanding concerns expressed by staff and Board members related to the documentation and impacts of the SYVTBID, this item was continued.

Since the May 4, 2010 Board hearing, the Solvang City Council discussed and adopted a number of changes to the SYVTBID materials as proposed by City staff. The Solvang City Council also agreed to continue their hearing to provide the County with an opportunity to consider participation in the

SVYTBID via adoption of a Resolution of Consent. Upon review of those changes, County staff has confirmed that previous concerns raised by both City and County staff have been addressed.

Attachments to this staff report include copies of the revised documents including: the SYVTBID Management District Plan (Attachment A, Exhibit A), the boundary map (Attachment B), and program bylaws (Attachment C). In addition, new documents have also been provided including a contract between the City of Solvang and Santa Ynez Valley Hotel Association (Attachment D) as well as draft minutes confirming the adoption of revised materials by the City of Solvang on May 10, 2010 (Attachment E).

### **Background:**

As discussed during the May 5, 2010 Board hearing, 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. To facilitate the overall operations of the SYVTBID, the Santa Ynez Valley Hotel Association (SYVHA) drafted a Management District Plan, which sets forth the proposed boundary of the SYVTBID, a service plan and budget, and a proposed means of district governance. This document has been revised to incorporate revisions requested by the County of Santa Barbara. Review of the new SYVHA Management District Plan, along with the City of Solvang's legislative documentation form the basis for the recommendations contained in this staff report.

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. 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 revenues are projected to be \$600,000 annually, or \$3 million through 2015. 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.

### **Addressing the County's Concerns**

Since the May 4, 2010 Board hearing, the Solvang City Council discussed and adopted a number of changes to the SYVTBID materials as proposed by City staff. Upon review of those changes, County staff has confirmed that previous concerns have been addressed. Summary analysis is provided below.

- 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 changes that City of Solvang’s City Council adopted on May 10, 2010 place this proposed marketing program within one of the government oversight approaches that have been upheld by a reviewing court (see Attachment A, Exhibit A).

- The draft district boundary map previously included areas of the unincorporated area beyond where lodging businesses are currently located, which had the potential to encourage further development of existing lodging businesses, or the sitting of new businesses, within the unincorporated portions of the SYVTBID. A new district map was developed for the revised Management District Plan which limits the SYVTBID boundaries to areas within which current member lodging establishments are located (see Attachment B).
- Previously, several sections of the Bylaws of Santa Ynez Valley Hotel Assn, Inc. (Bylaws) were blank, therefore the extent of the powers granted to the SYVHA was partially unknown. Complete bylaws have since been provided to the County (see Attachment C).
- The County was concerned that the 1% administrative offset provided to the County may not have adequately covered the costs associated with the collection and distribution of the assessment. Given projected room nights, the County Treasurer-Tax Collector would receive approximately \$650 to process the additional assessments each year. The new Management District Plan has increased the administrative retainer to 2%, or approximately \$1300 annually. Further discussions with the Treasurer-Tax Collector indicate that the staff-time and associated costs required to process the assessments would be low. Total costs are expected to fall within the 2% allowance. Process-related questions have also been addressed. Specifically, SYVTBID assessments would be given to the County by each of the 9 eligible unincorporated lodging businesses along with the normal monthly collection of the Transient Occupancy Tax (TOT). The Treasurer-Tax Collector notes that these payments would be segregated and tracked, with the SYVTBID portion remitted periodically 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.
- As of the May 4, 2010 Board hearing, the specific details of the contractual relationship, between the participating jurisdictions and the SYVHA remained unknown. Subsequently, the City of Solvang requested that a contract be developed. This contract has been provided to the County (see Attachment D).

**Based on the changes made to the SYVTBID documentation, as adopted by the City of Solvang on May 10, 2010, staff recommends that the Board of Supervisors provide an opportunity for unincorporated lodging establishments to participate in the SYVTBID by adopting the required Resolution of Consent.** As previously noted, 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.

The required Notice of Exemption pursuant to County's California Environmental Quality Act Guidelines, citing CEQA Guidelines Sections 15060(c)(3) and 15378(b)(4) is included as Attachment F should the Board adopt the Resolution of Consent.

**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 2% of the SYVTBID revenue collected from lodging establishments in the unincorporated area. The Treasurer/Tax Collector does not expect administrative costs to exceed the amount of the retainer.

**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: Revised SYVTBID Management District Plan (May 19, 2010)
- B. Proposed Boundary Map and SYVTBID Boundary Description
- C. SYVTBID Bylaws
- D. Contract between the City of Solvang and Santa Ynez Valley Hotel Association
- E. Draft minutes from the City of Solvang Council meeting on May 10<sup>th</sup> confirming the adoption of revised materials.
- 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:**

David Matson, Director of Housing and Community Development

Angie Hacker, Community Development Specialist, Housing and Community Development

**cc:**

Robert Geis, Auditor-Controller

Bernice James, Treasurer-Tax Collector