



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: CEO
Department No.: 012
For Agenda Of: March 15, 2016
Placement: Departmental
Estimated Time: 1.5 hours
Continued Item: No
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors

FROM: Ad Hoc Subcommittee Members:
Third District Supervisor Doreen Farr, Fourth District Supervisor Peter Adam
via Mona Miyasato, County Executive Officer *M*

Contact: Terri Nisich, Assistant County Executive Officer (568-3400)

SUBJECT: Status report on the Ad hoc Subcommittee of the Board of Supervisors Discussions
with the Santa Ynez Band of Chumash Indians

County Counsel Concurrence

As to form: Yes

Other Concurrence:

As to form: N/A

Auditor-Controller Concurrence

As to form: N/A

Recommended Actions:

That the Board of Supervisors:

- a. Receive and file report on the Ad hoc Subcommittee of the Board of Supervisors discussions with the Santa Ynez Band of Chumash Indians, and;
- b. Provide direction as appropriate to the Ad hoc Subcommittee of the Board of Supervisors regarding discussions with the Santa Ynez Band of Chumash Indians; and;
- c. Determine pursuant to CEQA Guidelines Section 15378(b)(5) that the above actions are not a project subject to CEQA review.

Summary Text:

This item is on the Board of Supervisor's agenda to provide a status report on the Ad hoc Subcommittee of the Board of Supervisors discussions with the Santa Ynez Band of Chumash Indians and to seek full Board direction as appropriate.

On August 25, 2015, the Board of Supervisors appointed Third District Supervisor Doreen Farr and Fourth District Supervisor Peter Adam to serve on the Ad hoc Subcommittee. This Subcommittee was created for the purposes of engaging in discussions with the Santa Ynez Band of Chumash Indians related to land use and financial matters of mutual concern, that include but are not limited to the Waiver

of Sovereign Immunity, the Santa Ynez Valley properties of interest (Camp 4, Mooney and Escobar, and the 350-acre "Triangle Property"), and other general topics between the County and the Tribe as appropriate.

The Ad hoc Subcommittee met with representatives of the Tribe in these discussions seven times since September 2015, in public meetings, and through that process, has exchanged terms of a potential agreement. No consensus has been reached and the Subcommittee is now requesting Board direction on next steps.

The Santa Barbara County Board of Supervisors has an adopted legislative platform policy position which recognizes the role and unique interests of tribes, states, counties and other local governments to protect all members of their communities and to provide governmental services and infrastructure beneficial to all. The County of Santa Barbara recognizes the Santa Ynez Band of Chumash Indians and the tribal right to self-governance as well as the need to provide for tribal members and preserve traditional tribal culture and heritage. Similarly, the County recognizes its own self-governance and responsibility to provide for the general health, safety, and welfare of all residents of its communities. This policy is consistent with the legislative position on tribal affairs adopted by both the California State Association of Counties (CSAC) and the National Association of Counties (NACo).

Background

The Ad hoc Subcommittee discussions are a result of a Fee-to-Trust acquisition by the Chumash Tribe for 1,400 acres in the Santa Ynez Valley known as "Camp 4." The Tribe has proposed 143 homes on the site with tribal facilities and other uses. This property is zoned for agricultural use (Ag-II-100) and contributes to the rural character of the Valley. As with all Fee-to-Trust acquisitions, placing the land into federal trust would remove the property from all County land use control and exempt the property from local taxes. On December 24, 2014, the Bureau of Indian Affairs issued a Notice of Decision stating its intent to accept Camp 4 into trust for the Tribe. The County and other parties appealed the decision of the BIA to take the land into trust and the adequacy of the environmental review. As of the preparation of this report, those appeals have not yet been resolved. The Chumash Tribe also sought approval of the acquisition through proposed legislation in the House of Representatives (HR 1157); that legislation is still in committee. For a full history and discussion of the Fee-to-Trust process and Camp 4 proposal, see Attachment A.

Formation of Ad Hoc Subcommittee of the Board of Supervisors and Discussions with the Santa Ynez Band of Chumash Indians

On August 25, 2015, the Board of Supervisors appointed Third District Supervisor Doreen Farr and Fourth District Supervisor Peter Adam to serve on the Ad hoc Subcommittee of the Board of Supervisors. The Board of Supervisors Ad hoc Subcommittee was created for the purposes of engaging in discussions between the Santa Barbara County Board of Supervisors and members of the Santa Ynez Band of Chumash Indians regarding land use issues and financial matters of mutual concern, that include but are not limited to sovereign immunity and Santa Ynez Valley properties of interest (Camp 4 Mooney and Escobar and the 350-acre "Triangle Property"). Other related topics as appropriate were also discussed. The meetings with the Tribe are conducted pursuant to the Brown Act and open to the public. All meeting agendas, correspondence, and videos can be found at <https://www.countyofsb.org/tribal-matters.sbc>.

From September 2015 to March 2016, the Ad hoc Subcommittee of the Board of Supervisors met with the Santa Ynez Band of Chumash Indians, represented by Tribal Chairman Vincent Armenta and Vice Chairman Kenneth Kahn, on seven occasions. Ground Rules for the meetings were adopted at the first meeting of September 24, 2015 (Attachment B). The County and the Tribe also agreed on key areas of focus to structure further discussions. During the course of the meetings, the County sought to achieve a mutual understanding of the Tribe's broader strategic and land use goals for properties held within the Santa Ynez Valley. In order to provide foundation for negotiations and the County's perspective on issues, information was provided by the County regarding service delivery and elements of municipal finance including property tax models. On December 10, 2015 the County provided the Tribe with an initial term sheet outlining the County's position on the mutually agreed upon focus areas of:

1. Waiver of Sovereign Immunity
2. Term
3. Municipal Finance
4. Future Use of Land and Limits
 - a. Gaming
 - b. Williamson Act considerations
 - c. Fee to trust lands

Since the December 10, 2015 meeting, the County has worked to continually provide information regarding the focus areas as referenced in the meeting agendas (Attachment C) and work towards a common middle ground. Attachment D provides the specific terms of the County's December 10, 2015 proposal for the Tribe's consideration and the progression of discussions through March 3, 2016. Over the course of discussions, the County provided terms which outlined a path to collectively address the expressed needs of the Tribe for housing for their lineal descendants and lands for tribal governmental purposes, while simultaneously working to ensure the health, safety and availability of resources for all served by the County and the Tribe. While agreement has been reached on components of a potential future agreement, significant disagreement continues on key terms within the focus areas. The current status of discussions of key terms within focus areas are summarized below:

Waiver of Sovereign Immunity – In order for any agreement to be enforceable by the County, the Tribe must provide an expressed waiver of sovereign immunity. The Tribe has proposed to use the waiver provision from the 2015 Tribal-State Compact. Since the Tribal-State Compact is an agreement under the federal Indian Gaming Regulatory Act and is subject to separate requirements and regulation, the County has requested revisions to that waiver provision to make it applicable for a potential agreement between the County and Tribe. The County proposes to eliminate the mutual County waiver and to add provisions for enforceability. The Tribe is proposing a limited waiver on their part but, by requesting a mutual waiver from the County, is requesting an unlimited waiver by the County which would include a waiver of immunity for individual Supervisors for official County actions. The County has already provided an appropriate waiver of sovereign immunity by state law through the Government Claims Act, which is the vehicle by which the State of California provides a limited waiver of sovereign immunity for the County. At the public meetings in November 2015 and February 2016, County Counsel provided explanation and authority for the County's requested revisions. At the Tribe's request, at the public meeting on March 3rd, County Counsel provided case citations for authority for the County's revisions. The Tribe indicated that they will review these citations.

Term – The County proposed a term of the agreement coterminous with any existing or future gaming compact with the State. This proposal recognized the need for a dedicated revenue stream for the Tribe to address payment in lieu of taxes/revenue requests made by the County as a component of the

agreement. While the Tribe initially referenced a term consistent with the end of their existing gaming compact of December 31, 2040, as of March 1, this was replaced with a term through December 2040 with a reopener if Class II Gaming exclusivity is breached and the compact with the State is reopened.

Municipal Finance - Consistent with property tax paid by residents of Santa Barbara County and to provide for the overall services enjoyed by the Tribe and community, the County requested payment in lieu of property taxes of 38% of the 1% assessed market valuation of properties for both land and improvements. This request is consistent with amount paid by individuals currently residing in residences located on federally held lands within the County such as the US Forest Service properties. The Tribe has asserted that they will pay the 38% of the 1% only on improvements (homes) not owned by the tribal entity, as the land is owned by the United States for the Tribe in Trust. The Tribe's valuation of homes at \$500,000 would, at full build out, yield approximately \$335,000 annually. The proposed County model, in which the value of land and improvements is assessed, reflects a valuation of \$2.1M. Therefore, the potential payment in lieu of property taxes to the County is approximately \$1.4 million annually at full build out of the 143 homes identified in Alternative B of the Environmental Assessment for Camp 4 (Attachment E). The differential in revenue generation between the proposed models is approximately \$1 million ongoing at full build out.

A component of the Tribe's March 1, 2016 proposal also included payment of in lieu of sales and transient occupancy tax equal to the County current tax rate. However of that total revenue derived, 25% of that amount would go to the County and of that 25%, 50% would be directed to the County and the remaining 50% to local schools in the Santa Ynez Valley. However, the project description adopted by the Tribe for Camp 4 does not include specific sales or transient occupancy tax generating uses such as commercial, retail or hotels. The Tribe included other properties in their March 1 response, as well as a tribal land use map (Attachment F), that references commercial uses for Camp 4 and the other properties. It is not however clear if the Tribe's sales/tax TOT proposal is just for Camp 4 or all of the properties referenced. The Tribe previously agreed to consider a separate agreement with the schools.

Gaming: Future Use of Land and Limits - As referenced above, HR1157 states that no gaming will be conducted on Camp 4. In addition, the Tribe has not pursued gaming on Camp 4 via the BIA administrative process to take land into trust. Therefore, consistent with statements made before Congress regarding components of HR1157, and the BIA process, the County requested a no gaming on Camp 4 provision as part of a potential future agreement. As of the March 3, 2016 meeting, the Tribe has not been willing to state unequivocally that gaming will not occur on Camp 4.

Williamson Act Considerations: Future Use of Land and Limits - Initially the County proposed that the Tribe comply with provisions of the Williamson Act contract through the end of the exiting term of 2023. This term is consistent with the Tribal Resolution honoring the existing terms of the Williamson Act contract on Camp 4. In the Tribe's January 14, 2016 proposal they requested the County work with the Tribe on cancellation of the contract on Camp 4. The County responded that cancellation of the Williamson Act would be considered on parcels 2 and 4 of Camp 4 if there is total agreement with the Tribe on overall terms of the agreement and, as required by law, there is overall public benefit to support findings required for Williamson Act cancellation, As of March 1, 2016 the Tribe is indicating a desire for cancellation of the contract for parcels 2 and 4 only, as well as a waiver of penalty fees; otherwise they are proposing they will comply with the contract until the end of the non-renewal period.

Fee to Trust: Future Use of Land and Limits - The formal fee to trust application submitted by the Tribe for Camp 4 requests 1,400 acres be taken into trust. The County has expressed significant concerns and opposed fee to trust acquisitions due to the land use, service, and economic impacts to the

community-at-large. However, in order to address the Tribe's expressed need for housing and government facilities, the County's initial December 10, 2015 proposal to the Tribe included approximately 200 acres for fee to trust land in order to accommodate the Tribe's need for land for housing and governmental uses. The Tribe's January 14, 2016 response remained at 1,400 acres. On February 1, 2016, the County returned with a provision to support Parcels 2 and 4 of Camp 4 being taken into trust (over 900 acres) to support housing and government purposes. The Tribe's February 5 response remained at 1,400 acres. However, they also included a provision for a tribal land trust/conservancy controlled by the Tribe on Parcels 3 and 5 of Camp 4. The details of the structure of the conservancy were not fully explored. On March 1, 2016, the Tribe provided the County with a new proposal indicating that they will pursue fee to trust on the 1,400 acres of Camp 4, as well as, the 356 acre commonly known as the "Triangle Property", and all properties owned at the Edison/Highway 246 intersection and east of the 6.9 acres including the gas station property. Attachment F provided by Tribe on March 1, 2016 is a map of the tribal land use for the properties previously referenced. As a component of the approach to land use, the Tribe also provided a tribal zoning model which includes the following:

- Tribal zoning map
- All building permits for review by County Planning under contract to Tribe (if County unavailable then contract planner mutually agreed upon);
- One public meeting hosted by Tribe and noticed to adjacent land owners and newspaper(s) of general circulation;
- All comments addressed by Tribal staff or contract planner selected by Tribe;
- Business Committee or designee approval (majority vote for permits; 4/5 vote for zoning changes).

When describing the fee to trust properties the Tribe indicated that the map was provided in response to the County's prior request for an overall plan for the use of properties held. This request was made by the County Ad hoc Subcommittee members at the meeting of September 2015. However, given that no response by the Tribe was provided to this request until March 1, 2016, and at the Tribe's prior request, the discussions pertaining to the agreement focused on the Camp 4 for the majority of meetings.

Due to the lack of movement by the Tribe on key focus areas, juxtaposed with the County's movement on key items over time referenced in Attachment D, Supervisors Farr and Adam indicated during the Ad hoc Subcommittee meeting of March 3, 2016, that they would return to the full Board of Supervisors with a status report on discussions to date and seek direction from the full board on next steps. It was specifically stated by Supervisor Farr that the return to the full Board was to provide an update on progress of discussions to date and the action should not be construed to be the end of formal discussions.

Supervisors Farr and Adam will provide additional detail regarding discussions at the Board of Supervisors meeting of March 15, 2016.

Performance Measure: N/A

Fiscal and Facilities Impacts: N/A

Key Contract Risks: N/A

Staffing Impacts: N/A

Legal Positions:

Attachments:

- A. History and Discussion of the Fee-to-Trust process and Camp 4 proposal and other matters
- B. Ground Rules of Meetings
- C. Summary of Agendas of Ad hoc Subcommittee Meetings with the Santa Ynez Band of Chumash Indians
- D. Proposals and Responses Regarding Terms between the County of Santa Barbara and the Santa Ynez Band of Chumash Indians
- E. Adopted Environmental Assessment-Land Use Designations
- F. Map Tribal Land Use Model provided by Tribe on March 1, 2016

Authored by:

Terri Nisich, Assistant CEO