



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: October 31, 2017
Placement: Departmental
Estimated Time: 1.5 hours
Continued Item:
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors

FROM: Joan Hartmann, Third District Supervisor – Ad Hoc Subcommittee Member
Das Williams, First District Supervisor – Ad Hoc Subcommittee Member

Contact Terri Nisich, Assistant County Executive Officer
Info:

SUBJECT: Memorandum of Agreement Between Santa Barbara County and the Santa Ynez Band of Chumash Indians Regarding Camp 4.

County Counsel Concurrence

As to form: Yes

Auditor-Controller Concurrence

As to form: Yes

Risk Management Concurrence:

As to form: Yes

Recommended Actions:

That the Board of Supervisors:

- a. Approve and authorize the Chair to execute a Memorandum of Agreement with the Santa Ynez Band of Chumash Indians regarding “Camp 4”;
- b. In accordance with the terms of the Memorandum of Agreement, authorize and direct the Chair to sign letters of support for H.R. 1491, in the form of Exhibit B to the Memorandum of Agreement;
- c. Provide other direction to the Ad Hoc Subcommittee on Tribal Matters and staff as deemed appropriate, and;
- d. Determine pursuant to CEQA Guidelines Section 15378(b)(4) and 15378(b)(5) that the above actions are not a project subject to CEQA review and direct staff to file a Notice of Exemption.

Summary Text:

This item is on the agenda at the request of the Ad Hoc Subcommittee of the Board of Supervisors on Tribal Matters for the full Board to approve, and authorize the Chair to execute an agreement between the County of Santa Barbara and the Santa Ynez Band of Chumash Indians (Tribe) regarding Camp 4.

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Background:

On August 25, 2015, the Board of Supervisors appointed Third District Supervisor Doreen Farr and Fourth District Supervisor Peter Adam to serve on an advisory Ad Hoc Subcommittee on Tribal Matters. This Subcommittee was created for the purposes of engaging in discussions with the Tribe related to land use and financial matters of mutual concern. These included, but were not limited to, a 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 comprised of then Third District Supervisor Farr and Fourth District Supervisor Adam met with representatives of the Tribe in these discussions nine times since September 2015, in public meetings, and through that process, exchanged terms of a potential agreement. Updates regarding the Subcommittee's discussions were provided to the Board of Supervisors on March 15, 2016 and August 30, 2016.

The Ad Hoc Subcommittee discussions are a result of a Fee-to-Trust acquisition by the Chumash Tribe for approximately 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). As with all Fee-to-Trust acquisitions, placing the land into federal trust removes the property from all County land use control and exempts the property from local property taxes. On December 24, 2014, the Bureau of Indian Affairs (BIA) 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.

On January 10, 2017, the Board of Supervisors appointed Third District Supervisor Hartmann and First District Supervisor Williams to the serve on the Ad Hoc Subcommittee of the Board of Supervisors.

On January 10, 2017, the Board of Supervisors directed County Counsel to initiate federal litigation if the Assistant Secretary affirmed the Regional Director's decision to take Camp 4 into trust for the Tribe.

On January 19, 2017, the Assistant Secretary of Indian Affairs for the United States Department of the Interior affirmed the Pacific Regional Director's December 24, 2014, decision to take the "Camp 4" parcels into trust for the Tribe. Further, the Assistant Secretary concluded that the Bureau of Indian Affairs conducted the appropriate level of review under the National Environmental Policy Act.

On February 7, 2017, the Board of Supervisors renewed the Ad Hoc Subcommittee with new members, Supervisor Hartmann and Supervisor Williams, and authorized the Ad Hoc Subcommittee to engage in discussions directly with the Tribal leadership outside of open, public meetings.

The renewed Ad Hoc Subcommittee, and the County Executive Officer under existing authority per County Code section 2-71, as executive agent of the Board of Supervisors in the County's

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intergovernmental relationships, continued discussions with the Santa Ynez Band of Chumash Indians, including staff-to-staff discussions on terms and options to achieve an agreement for consideration outside of open meetings. Since February of 2017, nine meetings between the Ad Hoc Subcommittee and the Tribe occurred. Through these discussions, terms for an agreement were explored. The community has been presented with the terms of the agreement in three publicly noticed meetings of the Ad Hoc Subcommittee on September 25, 2017, October 5, 2017, and October 9, 2017.

Several factors impacted the discussions between the County and the Tribe. Factors included but were not limited to:

- The January 19, 2017 action of the Department of the Interior, which affirmed the Regional Director's decision to take Camp 4 into trust and concluded that there was adequate NEPA review on the proposed Camp 4 project.
- County litigation was filed in federal court.
- Congress is poised to act on H.R. 1491.
- The Supreme Court will soon hear arguments about whether or not Congress has the right to dismiss fee-to-trust litigation.

Ad Hoc Subcommittee Principles:

The new Ad Hoc Subcommittee began meetings with the Tribal leadership in February 2017. Key principles that guided the work of the Ad Hoc Subcommittee included:

- Build on the early work of the previous Ad Hoc Subcommittee and Tribe in the public process
- Recognize Tribal sovereignty and self-governance
- Recognize need for Tribal housing
- Recognize critical services provided by County and Tribe
- Protect the rural character of the Santa Ynez Valley
- Address fiscal and environmental impacts
- Provide greater certainty regarding development and timing
- Establish strong model for government-to-government relations

Key Terms of the Agreement:

Key terms of the agreement include, but are not limited to the following:

Waiver of Sovereign Immunity

In order for any agreement to be enforceable by the County, the Tribe must provide an express waiver of sovereign immunity. Therefore, securing a waiver was directed by the Board of Supervisors in the initiation of the original Ad Hoc Subcommittee process in August 2015 and identified by the Board and the Ad Hoc Subcommittee as foundational to the County and the Tribe moving forward on an agreement.

The waiver of sovereign immunity was the subject of discussions at multiple public Ad Hoc Subcommittee meetings from August 2015 to March 2016. Then, in Open Session on March 15, 2016, the Board of Supervisors directed County Counsel to work with the Tribe to develop waiver of

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sovereign immunity language that was appropriate for the County. On August 30, 2016, the Board of Supervisors received a report on the waiver of sovereign immunity and separately approved an agreement for law enforcement services with the Tribe that included this waiver. The waiver of sovereign immunity language provided within tentative Memorandum of Agreement is consistent with the terms of the previously approved August 30, 2016 law enforcement contract with the Tribe.

For clarity, the County has two law enforcement agreements with the Tribe:

- The first law enforcement agreement, approved by the Board on November 4, 2014, does not contain a waiver of sovereign immunity. At the November 4 hearing, enforceability of the agreement was addressed. Since there is not a waiver of sovereign immunity in that agreement, the County could not litigate that agreement in court. However, the County mitigated that risk by the Tribe agreeing to prepay for law enforcement services on a quarterly basis.
- The second law enforcement agreement of August 30, 2016, however, does contain the Tribe's waiver of sovereign immunity which is the same waiver proposed for this tentative Memorandum of Agreement on Camp 4. So, the County would be able to litigate to enforce the August 30, 2016 law enforcement agreement and the tentative Memorandum of Agreement on Camp 4.

In the waiver, the Tribe has expressly, and irrevocably, waived for the term of this agreement its right to assert immunity from suit and enforcement and execution of any ensuing judgment or award and has consented to be sued in the federal and state courts. The waiver is specific and irrevocable but is limited to issues that may arise solely under the agreement. In addition, Tribe's General Council (the whole membership of the Tribe) is the governing body of the Tribe and will vote on the proposed Memorandum of Agreement. If approved by vote, the General Council will approve a Resolution authorizing the Tribal Chairman to sign the proposed Memorandum of Agreement and approve waiving sovereign immunity. The Resolution, once executed by the Tribal Chairman, will be attached as Exhibit D to the proposed Memorandum of Agreement. There are no third-party beneficiaries to the waiver.

Term

The agreement is effective upon the latest of the dates on which the following conditions are met:

- Approval of agreement by County Board of Supervisors.
- Approval by the General Council of the Tribe.
- Approval by the Secretary of the United States Department of the Interior (SOI) or designee, or written determination that SOI approval is not needed.
- Dismissal of the County's federal litigation.

The agreement is effective until December 31, 2040.

Mitigation of Fiscal Impacts

The County and Tribe have agreed that payments under this Agreement do not constitute taxes, exactions or fees. Payments are to support an approximate level of County services to Camp 4 and affected communities. The Tribe will pay to the County a flat annual fee of \$178,500 per year, due in four equal quarterly payments. However, payments stop upon expiration of the agreement on December 31, 2040. The Tribe must however comply with the terms of the Williamson Act on Camp 4 until December 31, 2023. The payments described begin the earlier of either: January 2024, after the

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expiration of the Williamson Act; or if through the passage of H.R. 1491 the Williamson Act Contract on Camp 4 is canceled or terminated prior to December 31, 2023, the payments to the County would begin upon completion of the first home on Camp 4 property. The County has agreed that these payments may qualify as credits related to the payments due under the Tribal State Compact and has agreed to support the Tribe getting credit for these payments. This credit referenced does not impact payments under this Agreement to the County, rather only potential payments by the Tribe to the State.

Land Use

In regards to land use, the Tribe must comply with the Final Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) and Alternative B specifically. In addition, the Tribe has agreed to no buildings on “Camp 4” within 985 feet of State Highway 154 and that all required mitigation measures in the FONSI and Final EA for Alternative B will be implemented. Summarized, Alternative B of the Final EA for Camp 4 provides for the following:

- 194 acres of Residential -143 one acre residential lots
- 206 acres of Agriculture
- 869 acres of Open Space/Recreational –General/Trails
- 30 acres of Special Purpose Zone –Tribal Facilities
- 98 acres of Resource Management Zone –Riparian Corridors,
- 33 acres of Resource Management Zone –Oak Woodland
- 3 acres of Special Purpose Zone- Utilities
- The primary water source identified to serve the project is groundwater and recycled water. Wastewater treatment will be addressed through an on-site wastewater treatment plant.

The Final EA expressly delineates that no gaming would occur on the subject property (Camp 4). Further, H.R. 1491 Section 3. REAFFIRMATION OF STATUS AND ACTIONS (g) RESTRICTED USE OF TRANSFERRED LAND states “The Tribe may not conduct, on the land described in this subsection (b) taken into trust for the Tribe pursuant to this Act, gaming activities –

- (1) As a matter of claimed or inherent authority; or, (2) under any Federal law including the Indian Gaming Regulatory Act (25 U.S.C. 2701 et seq.) and regulations promulgated by the Secretary or the National Indian Gaming Commission under that Act.”

Consistency with Santa Ynez Community Plan:

Pursuit of an enforceable Intergovernmental Memorandum of Agreement for “Camp 4” is consistent with the policies contained within the Santa Ynez Valley Community Plan.

Specifically Policy LUC-SYV- 6 indicates, the County shall oppose the loss of jurisdictional authority over land within the plan area where the intended use is inconsistent with the goals and policies and development standards of the Plan or in the absence of a satisfactory enforceable agreement. In addition, Action LUG- SYCV-6.1 indicates, the County shall pursue legally enforceable government-to-government agreements with entities seeking to obtain jurisdiction over land within the Plan Area to encourage compatibility with the surrounding area and mitigate environmental and financial impacts to the County.

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Dismissal and Support Provisions

The proposed agreement provides that the County will dismiss its federal litigation and support H.R. 1491 with amendments requested by the County to reference the Agreement specifically.

Safety Code Compliance

All safety and code compliance and monitoring will be conducted by mutually agreed upon third party consultants. Consultants will be qualified licensed professionals. The Tribe will also use the California Building Code and Public Safety Code for construction of all facilities

Public Outreach and Feedback

Prior to the Board of Supervisors' consideration of the proposed Memorandum of Agreement with the Santa Ynez Band of Chumash Indians, the Ad Hoc Subcommittee, in conjunction with the Tribe, conducted three public meetings to inform the public of the proposed terms of the Agreement. These meetings occurred on September 25, October 5 and October 9. During the first meeting, a summary of the known terms of the proposed Agreement was provided to the community, as the full Agreement was not complete. Once the completed Agreement was available, it was provided to the community via the formal posting of the October 3, 2017 Set Hearing for the Board of Supervisors Meeting of October 17, 2017. The completed Agreement was also provided to the public via the Board of Supervisors Ad Hoc Subcommittee Regarding Santa Ynez Valley Band of Chumash Indian Matters Website on September 28. The Tribe also held meetings for their membership prior to conducting their formal vote of their General Council, which is the entire membership of the Tribe.

Highly summarized, questions posed by the community regarding the Agreement were in the following areas:

- Scope of Agreement
- Term
- Legislation
- Land Use
 - Gaming
 - Water
 - Limits on commercial
 - Tribal facilities
 - Tribal Land Consolidation Area
 - Development options for Camp 4 and impacts to surrounding residential
 - Natural resources impacts and mitigation
 - Traffic impacts
 - Solid waste hauling
- Enforceability – Waiver of Sovereign immunity
- Public Process and timing of the Agreement

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In order to address the questions posed by the community via the public meetings and received through the website, a summary of responses was developed. (Attachment E.) This summary was provided at the public meetings and on the Ad Hoc Subcommittee website.

Fiscal and Facilities Impacts:

As noted above, the Tribe will pay to the County a flat annual fee of \$178,500 per year, due in four equal quarterly payments. However, payments stop upon expiration of the Agreement on December 31, 2040. The payments described begin the earlier of either: January 2024, after the expiration of the Williamson Act; or, if through the passage of H.R. 1491 the Williamson Act Contract on Camp 4 is canceled or terminated prior to December 31, 2023, the payments to the County would begin upon completion of the first home on the Camp 4 property. The County has agreed that these payments may qualify as credits related to the payments due under section 5.2 pursuant to section 5.3 of the Tribal State Compact and has agreed to support the Tribe in getting credit.

Attachments:

- A. Memorandum of Agreement between Santa Barbara County and the Santa Ynez Band of the Chumash Indians Regarding Camp 4.
- B. H.R. 1491 – Current Version
- C. Final EA for Camp 4 - Volumes I and II (Hard copy not attached - located at: www.countyofsb.org/tribal-matters.sbc)
- D. Notice of Exemption
- E. Responses to Question and Comments Posed by the Community
- F. PowerPoint

Authored by:

Terri Nisich, Assistant County Executive Officer

Special Instructions:

Direct the Clerk of the Board to post the Notice of Exemption within 5 days of the Board of Supervisor's action.