



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: August 25, 2015
Placement: Departmental
Estimated Time: 2 hours
Continued Item: No
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors
FROM: Mona Miyasato, County Executive Officer
Terri Nisich, Assistant County Executive Officer (568-3400)
SUBJECT: Update HR 1157 (La Malfa) and the June 17, 2015 hearing by the House Subcommittee on Indian, Insular and Alaska Native Affairs

Mona Miyasato
for mm.

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 status of HR1157 (Santa Ynez Band of Chumash Mission Indians Land Transfer Act of 2015, sponsored by Representative LaMalfa) and the outcome of the June 17, 2015 hearing of the House Subcommittee on Indian, Insular and Alaska Native Affairs, and;
- b. Provide direction to the County Executive Officer regarding further discussions with the Santa Ynez Band of Chumash Indians regarding Camp 4; and;
- c. Provide direction to the County Executive Officer regarding the request by the Santa Ynez Band of Chumash Indians for government to government consultations for the purposes of the Tribe taking the Mooney (APN 143-242-001/2) and Escobar (APN 143-252-001/2) properties into trust, and;
- d. 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 Supervisors' agenda to provide a status report of the La Malfa Bill, HR 1157, and an overview of the June 17, 2015 hearing conducted by the House Subcommittee on Indian, Insular and Alaska Native Affairs. This letter also seeks Board direction regarding next steps for potential discussions with the Santa Ynez Band of Chumash Indians.

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 provide governmental services and infrastructure beneficial to all. Further 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

Federal Fee-to-Trust Process

The issue of Fee-to-Trust acquisitions has been challenging for all local governments. Federal guidance and the existing Bureau of Indian Affairs system has resulted in processes that fail to include adequate balancing of legitimate interests and provide adequate transparency to the public. This unsatisfactory process creates significant controversy, conflicts between tribes and local governments, and broad distrust of the system's fairness. Santa Barbara County has experienced this conflict in recent years with respect to the Chumash Tribe's Fee-to-Trust proposals as described below.

The Fee-to-Trust process is governed by the Indian Reorganization Act (IRA), 25 U.S.C. § 461 et seq, which authorizes the Secretary of the Interior to acquire land in trust for tribes as a foundation for tribal self-governance and economic development. Under IRA, the Secretary has the discretion to acquire "any interest in lands, water rights or surface rights to lands, within or without existing reservations . . . for the purposes of providing lands for Indians." 25 U.S.C. § 465. Further, Title 25 of the Code of Federal Regulations, Part 151, provides a regulatory framework for consideration of Fee-to-Trust applications.

Tribal trust land may be used for a number of activities including but not limited to cultural activities, governmental activities, gaming, residential development and commercial development. Typically there are a variety of on and off reservation impacts to local government resulting from tribal trust land development including the loss of jurisdiction over lands, tax base, and planning and zoning authority; environmental, infrastructure and service impacts; and insufficient or unacknowledged additional services that may be required as a result of the development.

The current law and regulations governing Fee-to-Trust applications do not sufficiently address these potential effects on local jurisdictions, which the County of Santa Barbara has asserted as part of its concerns with the current Fee-to-Trust process. In the absence of federal reform of the process, some counties have attempted to partially mitigate these negative impacts through legally binding, negotiated agreements with their local tribes.

History and Context of Camp 4 Fee-to-Trust Proposal

The County's interactions with the Tribe on fee to trust issues spans several years. A timeline is shown in Attachment A.

- On November 8, 2000 the Santa Ynez Band of Chumash Indians petitioned the Bureau of Indian Affairs (BIA) to accept 6.9 acres of land near the boundaries of their existing reservation into trust. The Tribe proposed a cultural center, museum and a park on the land south of Santa Ynez Park between Numancia Street and Highway 246. There would also be a gift shop and support

offices. On January 14, 2005, the Pacific Regional Director of the BIA approved taking the 6.9 acres into trust.

- At that time, the County was involved in negotiations with the Tribe to establish an intergovernmental agreement which would have specified uses of the land. Local citizen groups filed an administrative appeal. During those appeals the U.S. Supreme Court decided *Carciere v. Salazar* and the matter was remanded to the BIA for further analysis in light of the subsequent events. In June of 2013, a Notice of Decision was issued by the Pacific Regional Office of the BIA affirming that the 6.9 acres was taken into trust.
- In June of 2011, the Santa Ynez Band of Chumash Indians sent a copy of a draft cooperative agreement for Camp 4 to the County. The agreement described a Tribal housing need and opportunities to operate Tribal economic projects. The draft contained a section for payment in lieu of taxes; however, the amount was left blank. There was no description of the proposed development of the site at the time, and hence no way for the County to assess potential impacts or mitigation. Later, the Chumash reported they had made a verbal offer of \$1 million a year for a period of 10 years to the County. Given that a development proposal was not in place at the time, it was unclear upon what the amount was predicated.
- In March of 2013 the Tribe proposed an 11,500 acre Tribal Consolidation Area and submitted its lands consolidation and acquisition plan to the BIA for approval. The Federal Government's land acquisition policy, 25 C.F.R., Part 151.3(a)(1), states that land may be acquired for a tribe in trust status when it is within the exterior boundaries of the tribe's reservation or adjacent thereto, when the tribe already owns an interest in the land, or for land within a tribal consolidation area.
- The BIA approved the plan on June 17, 2013. In September of 2013, the County appealed the BIA decision to approve the Tribal Consolidation Area (TCA). On October 11, 2013 the Tribe sent a letter to the BIA withdrawing its request for consideration of the Tribal Consolidation Area. On October 28, 2013 the County received notice from the Interior Board of Indian Appeals (IBIA) stating that it had docketed the appeal, vacated the Regional Director's June 17, 2013 approval and dismissed the appeal as moot.
- In July of 2013, the application for Fee-to-Trust for Camp 4 was filed with the BIA; subsequently in August of 2013, notice of non-renewal of the Williamson Act contract in place on Camp 4 parcels was received by the County.
- On August 20, 2013, following a March 6, 2013 letter from Tribal Chairman Armenta to the Chair of the Board of Supervisors requesting government to government dialogue, the Board of Supervisors voted 3 to 2 to request that the Tribe begin discussions with the County Planning and Development Department regarding their plans to develop the Camp 4 property for tribal housing and any other projects the Tribe would like to build at Camp 4. The Board of Supervisors further directed that County staff work with the Tribe on any potential plans for Camp 4 and report back to the Board on a regular basis for direction as appropriate.
- The CEO, County Director of Planning and Development, and a planner met with Tribal Representative, Sam Cohen, to discuss Camp 4 and the Fee-to-Trust process in September 2013.
- On September 17, 2013 the BIA gave official notice to the County of the application for transfer of title for fee lands into trust for the property commonly known as Camp 4.

- On October 31, 2013, the County of Santa Barbara via the County Executive Office, sent a formal comment letter to Amy Dutschke, Regional Director of the Bureau of Indian Affairs, opposing the Fee-to-Trust application for Camp 4 because of the significant revenue impacts, jurisdictional issues, land use conflicts and the lack of revenue to support public services resulting directly from the property being removed from the tax rolls. Overall concerns and arguments expressed by the County included: the need for all 1,433 acres to be taken into trust for the purposes of providing housing; lack of an environmental impact statement; failure to thoroughly examine direct and cumulative impacts of the project(s) proposed; and potential revenue loss to the County to provide services potentially impacted by the project. The Tribal consolidation area, proposed yet ultimately withdrawn by the Tribe, was also subject of the letter.
- In November 2013, the Tribe submitted an amended Fee-to-Trust Application to the BIA removing references to the TCA. On November 25, 2013, the County received official notice of the amended application.
- On December 17, 2013, the County of Santa Barbara via the County Executive Office, sent a revised formal comment letter to Amy Dutschke, Regional Director of the Bureau of Indian Affairs, opposing the amended Fee-to-Trust application for Camp 4 because of the significant revenue impacts, jurisdictional issues, land use conflicts and the lack of revenue to support public services resulting directly from the property being removed from the County tax rolls. Overall concerns and arguments expressed by the County included: the lack of need for all 1,433 acres to be taken into trust for the purposes of providing housing; lack of an environmental impact statement; the incompatibility with land use plans and regulations; and potential revenue loss to the County to provide services potentially impacted by the project.
- In May 2014, the BIA completed and released a Final Environmental Analysis of the Camp 4 Trust Acquisition.
- In July 2014, the County of Santa Barbara submitted comments on the Final Environmental Analysis requesting that the BIA prepare an Environmental Impact Statement due to Camp 4's significance. The County pointed out the numerous environmental impacts that may result from the project in many resources areas and the inadequacies and inaccuracies contained in the Final Environmental Analysis.

Current Camp 4 Fee-to-Trust Acquisition

The proposed Camp 4 project encompasses over 1,400 acres and is zoned AG-II-100 (Agriculture, with a minimum parcel size of 100 acres). This property, acquired by the Santa Ynez Band of Chumash Indians in 2010, is also in a multi-year Agriculture Preserve (Williamson Act) contract. The Santa Ynez Valley Community Plan includes guidance that the County shall oppose the loss of jurisdictional authority over land within the Plan area where the intended use is inconsistent with the goals, policies and development standards of the Plan or in the absence of a satisfactory legally enforceable agreement. Camp 4 is located approximately 1.6 miles from the existing reservation.

The Environmental Assessment prepared for Camp 4 identifies two development alternatives. Alternative A consists of 1,433 acres to be converted to 143 five acre residential lots. The project would also include 206 acres of vineyards, 300 acres of open space/recreation, 98 acres of riparian corridor and 33 acres of oak woodland conservation, and 3 acres of a special purpose utility zone. Alternative B consists of 143 one acre residential lots, 869 acres of open space/recreation use and 30 acres of tribal

facilities as well as same acres as Alternative A for vineyard, riparian corridor, oak woodland conservation, and utilities. Tribal facilities include a meeting hall, kitchen, break room, private offices, conference room, general office, training room and circulation/miscellaneous areas, as well as 250 parking spots.

- On October 17, 2014, the BIA issued a Finding of No Significant Impact (FONSI) for the Camp 4 Fee-to-Trust Project based on the Final Environmental Analysis for the project. In the FONSI, the Regional Director stated that the Tribe had passed Tribal Resolution 930B since completion of the Final EA, which selects the one-acre concept plans, Alternative B, as the Preferred Project Alternative for Camp 4.
- In response to the FONSI, and in consideration of the Board of Supervisors meeting schedule and the short time frame in which the Department of the Interior could potentially approve the Camp 4 Fee-to-Trust Application, on November 4, 2014, the Santa Barbara County Board Supervisors voted 3 to 2 to initiate appropriate administrative appeals and litigation to challenge both the FONSI and any subsequent approval of the Tribal Fee-to-Trust application.
- On December 24, 2014, the Pacific Regional Director of the BIA approved the Fee-to-Trust application for Camp 4 and issued a Notice of Decision stating the BIA's intent to take 5 parcels of land totaling approximately 1,427.78 acres into trust for the Santa Ynez Band of Chumash Indians. A decision made by a Regional Director of the BIA may be appealed administratively to the United States Department of the Interior Office of Hearing and Appeals, Interior Board of Indian Appeals (IBIA).
- On January 22, 2015 the County filed a formal appeal with the IBIA. The appeal included appeal of the December 24, 2014 Notice of Decision and the October 17, 2014 issuance of the Finding of No Significant Impact and incorporated findings of the May 2014 Final Environmental Analysis. As of the preparation of this report, there has been no decision on the appeal as it is still in the briefing stages.

Since the June 17, 2015 Congressional committee hearing, additional actions have occurred pertaining to Chumash acquisitions and Fee-to-Trust applications apart from the Camp 4 Fee-to-Trust process and appeal. This includes:

- In June 2015, the Tribe finalized the purchase of approximately 350 acres of land in the Santa Ynez Valley from the San Carlos Land Company. The parcels extend from Meadowvale Road to Highway 154 between Cimarron Drive and Highway 246 and are approximately 0.6 miles from the Tribe's Reservation. The parcels are zoned AG-II-40 and historically have been used for cattle grazing. The parcels are not under a Williamson Act contract.
- On August 5, 2015 the Tribe sent formal notice to the County stating its desire to take two parcels known as Mooney and Escobar (APN 143-242-001/2 and APN 143-252-001/2, respectively) into trust and begin government to government consultations.

August 5, 2015 Letter from Chumash to take Mooney and Escobar Properties into trust

On August 7, 2015, the Chair of the Board of Supervisors received the August 5, 2015 letter from Tribal Chairman Vince Armenta indicating the Santa Ynez Band of the Chumash Indians desires to annex APN 143-242-001/2 (Mooney) and APN 143-252-001/2 (Escobar) properties into federal trust. In addition the Tribe made a formal request for government to government consultations with the County of Santa

Barbara regarding taking the properties into trust. The parcels are located in the Santa Ynez Valley. Pursuant to the letter, the Mooney Property is located on the southern shoulder of State Highways 246 and the Escobar Property is similarly situated on State Highway 246 and also contains Sanja Cota Road and bridge. The Tribe has provided a Phase 1 Environmental Site Assessment for both parcels. Staff is seeking direction from the Board of Supervisors on next steps regarding the requested fee to trust government to government consultations.

Other County and Tribe Interaction

While the County opposed the Camp 4 Fee-to-Trust acquisition due to the detrimental impacts to the County, the County has a history of working cooperatively with the Tribe on other issues. This includes a 2002 agreement for one firefighter/paramedic post position (3FTE) at Fire Station 32 (Santa Ynez) as well as a recently executed agreement, May 2015, for the same position and one additional firefighter/paramedic post position (3FTE) at Fire Station 30 in Solvang. In addition to the ongoing staffing, the Tribe agreed to fund on a one time basis a fully equipped Aerial Ladder truck at a cost not to exceed \$1.6 million. The new agreement also defined the annual operational plan and emergency response parameters for Santa Barbara County Fire Department and the Chumash.

Similarly, in November of 2014 the County entered into an agreement with the Tribe for law enforcement services on the Chumash reservation to provide for patrol duties. The contract covers the cost of 5.0 FTE deputy sheriff positions plus the cost of purchasing and operating the patrol vehicle. This agreement sought to mitigate the loss of the special distribution fund monies which previously paid the cost of the deputies and address the impacts of the existing casino/hotels as well as the casino/hotel expansion on the areas surrounding the reservation.

The fire protection/suppression and law enforcement mitigations noted above were requested by the County for the casino/hotel expansion. Other mitigations requested for public safety and other issues have not been addressed.

In addition, in August of 2009, the Tribe submitted a development plan and conditional use permit applications for the Chumash Gas Station and Carwash. The application requested approval of a new 2,500 foot convenience store, an underground storage tank, five fueling stations, a carwash, a propane tank storage area, and a station to service air and water for vehicles. The application included requests for reductions in structural and landscaping setbacks associated with Santa Ynez Valley Community Plan Development Standards. The project development plan was approved by the County Zoning Administrator in February of 2011. A land use permit was approved by County staff in August of 2011 and later appealed. On December 14, 2011 the County Planning Commission denied the appeal, and the land use permit was issued in August of 2012.

HR 1157

Camp 4 has not been transferred into trust, pending the appeal by the County and other entities. HR 1157, introduced on February 27, 2015 by Congressman La Malfa (First District – CA) is provided as Attachment A. HR 1157 is a legislative vehicle to transfer title of Camp 4 to the United States Secretary of the Interior for the purposes of taking the land into trust for the Tribe. Other than a restriction on gaming, HR 1157 poses no restriction on the Tribe's use of Camp 4. The bill also clarifies that the Williamson Act will no longer apply to Camp 4. Adoption of HR 1157 would bypass the existing BIA review process to take the land into trust. Further adoption of HR 1157 would moot the County's pending administrative appeal of the BIA's 2014 decision to take Camp 4 into trust.

June 17, 2015 Hearing on HR 1157

On June 10, 2015, the Board of Supervisors designated CEO Miyasato as the County representative to attend and testify in opposition at the hearing on HR 1157. The testimony provided during the hearing is provided as Attachment B. Others invited to speak on HR 1157 at the hearing included Steve Lavagnino, Fifth District County Supervisor; Mike Black, Director U.S. Bureau of Indian Affairs; and Vincent Armenta, Chairman of the Santa Ynez Band of Chumash Indians.

Summarized key issues expressed by the CEO regarding the impacts of HR 1157 included:

- The County has a pending appeal of the decision by the Bureau of Indian Affairs to accept Camp 4 into trust and the BIA's related decisions under the National Environmental Policy Act (NEPA);
- The purpose of the Code of Federal Regulations (CFR) administrative appeal process is to address concerns of local entities and residents, including loss of tax revenue, lack of compliance with NEPA, insufficient environmental mitigation and conflicts with local land use regulations;
- HR 1157 would short-circuit this administrative process and prevent the County and its residents from addressing these concerns; and
- HR 1157 does not rule out any use of the property other than gaming, while the BIA's administrative process proposes residential use and is more focused.

CEO Miyasato expressed a willingness to work with the Tribe on the need for housing noting that the County does not oppose this pursuit. Other testimony from speakers is summarized below:

- Congresswoman Lois Capps opposed HR 1157 and expressed concerns regarding protecting the rural nature of the Santa Ynez Valley yet acknowledged the need for increased housing for the Tribe. She expressed that there is a path forward for the Tribe, County and valley residents to come together to reach agreement wherein the full array of interested parties have the opportunity to have their views heard. She stated that that resolution needs to occur locally and believed that Congress should not intervene into a local issue. Further, she indicated that need to move forward with the BIA process and allow for the full appeals process and associated discussions to occur. Congresswoman Capps also voiced concern regarding a matter pertinent solely to her jurisdiction being considered in the committee forum.
- Chairman Vincent Armenta expressed a desire for adequate housing to meet the needs of the tribal members noting that constructing of housing on the existing reservation is not possible. He referenced providing an agreement for discussion and subsequently offering \$1 million a year for a period of 10 years in consideration of impacts to the area from Camp 4. (Notably, the agreement was provided prior to an actual project description and a formal written offer regarding the monetary amount from the Tribe does not exist.) Chairman Armenta stated that he believed the County was unwilling to negotiate on Camp 4.
- Supervisor Steve Lavagnino noted overall concern with the lack of government to government interactions.
- Highly summarized, the various members of the Committee indicated to the County Executive Officer the need for the County to further engage the Tribe on Camp 4 and conduct good faith

negotiations; concern regarding the lack of government to government negotiations; and their desire to move the bill forward if parties could not collaborate on a way forward. Chairman Young specifically expressed concerns and suggested that the County sit down with the Tribe. Other members continued to promote the possibility of achieving a mutually beneficial agreement moving forward and requested that the views and concerns of the Committee, expressed during the hearing, be communicated to the Board of Supervisors.

- The full record of engagement with the Tribe, on Camp 4 and the most recent casino/hotel expansion, were not a part of the official record for the hearing.
- Attachment C provides a timeline of actions, interactions, and outcomes pertaining to Camp 4 and the recent casino expansion and other actions.

HR1157 Potential legislative paths forward

Following the June 17 hearing on HR 1157 by the House Subcommittee on Indian, Insular and Alaska Native Affairs, the process would be that the full Natural Resources Committee will ultimately schedule the bill for mark-up and approval. There is no schedule or timing for this action to take place, and it is at the discretion of full Committee Chairman Bishop (R-UT). Typically, the bill would be bundled with a grouping of similar bills for a mark-up session. As of the date of preparation of this Board letter, the Committee has not calendared such a meeting and it is not likely to be scheduled until Congress returns in the fall.

If the Natural Resources Committee approves HR 1157, the next step would be consideration and passage by the full House of Representatives. While there is no defined time frame, this process could take place in a variety of ways:

- Scheduled for debate as a stand-alone bill, which involves a cumbersome process of approval of a rule of procedure by the Rules setting the terms of debate and potential amendments. This is unlikely given the narrow scope of the bill.
- Brought up under Suspension of the Rules, an expedited procedure that does not require a separate rule of procedure, but requires a two-thirds majority vote to pass.
- Added to another legislative vehicle that is moving through the process. Examples are budget or tax bills, or perhaps other Natural Resources Committee legislation that could be bundled together to expedite consideration.

The County's legislative advocates, Tom Walters and Associates are engaged in all aspects of HR 1157 and are continually tracking any movement on the legislation.

Next Steps- Invitation for discussions about Camp 4 and the Mooney and Escobar Properties

As noted in the House Subcommittee on Indian, Insular and Alaska Native Affairs hearing of June 17th, members of Congress made strong statements urging the County to engage in government to government negotiations with the Tribe and ideally resolve issues locally.

In a review of the Fee-to-Trust process overall, a recent 2012 Pepperdine Law Review article was found. This review analyzed the Notices of Decision of the Pacific Region of the Bureau of Indian Affairs on proposed trust acquisitions from 2001 through 2011. The article analyzed a total of 111 decisions and found that 100% of the proposed trust acquisitions were granted.

Various California Counties have reached cooperative intergovernmental agreements with tribes in order to address policy issues that affect both governments. These agreements address mitigation for impacts of casino development/gaming as well as commercial, residential and economic development activities of various tribes. Representative counties with recent agreements include the counties of Sonoma, San Diego, Riverside, Yolo and Placer. Common points referenced in a number of the agreements include but are not limited to the following:

- Securing comprehensive environmental review and compliance with local ordinances/land use regulations as well as mitigations for direct and cumulative impacts of development.
- Providing essential infrastructure and service support for proposed development.
- Providing payment to a County for loss of property, sales and transient occupancy tax to compensate for loss of ongoing revenue.
- Outlining the process to resolve disputes through negotiations and binding arbitration and a Tribal waiver of sovereign immunity for court enforceability of an agreement.
- Terms of agreements varied.

Terms of agreements with Indian tribes are referenced under 25 U.S.C. § 81. This section states, “No agreement or contract with an Indian tribe that encumbers Indian lands for a period of 7 or more years shall be valid unless that agreement or contract bears the approval of the Secretary of Interior or a designee of the Secretary.” 25 U.S.C. § 81(b). Therefore, the County would have to seek approval if a term of any negotiated agreement encumbered trust land for 7 or more years.

Should the Board of Supervisors direct further discussions with the Tribe regarding Camp 4 and/or the Mooney and Escobar properties, the CEO, exercising her discretion, will assemble a team best suited to address the multiple issues expressed by the County over time, and work toward a mutually beneficial resolution to issues locally.

Performance Measure: N/A

Fiscal and Facilities Impacts: N/A

Key Contract Risks: N/A

Staffing Impacts:

Legal Positions:

Attachments:

- A. HR 1157
- B. Testimony provided by witnesses testifying at June 17, 2015 Committee hearing.
- C. Timeline of events and engagement of Santa Ynez Band of Chumash Indians regarding Camp 4 and recent casino expansion.
- D. Map – Properties of Santa Ynez Band of Chumash Indians.
- E. Letter dated August 5, 2015 from Santa Ynez Band of Chumash Indians.

Authored by:

Terri Nisich, Assistant CEO