



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: September 1, 2015
Placement: Departmental
Estimated Time: 30 minutes
Continued Item: No
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors

FROM: Department Director(s) Mona Miyasato, County Executive Officer, 568-3400
Contact Info: Terri Nisich, Assistant County Executive Officer, 568-3400

SUBJECT: 2015 Tribal-State Gaming Compact Between the State of California and 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 a report on the 2015 Tribal-State Compact between the State of California and the Santa Ynez Band of Chumash Mission Indians and provide direction to staff as appropriate; and
- b) Determine pursuant to California Environmental Quality Act (CEQA) Guidelines Section 15378(b)(5) that the above action is not a project subject to CEQA review.

Summary Text:

On Wednesday, August 26, 2015, the Governor announced the signing of a new Tribal Gaming Compact between the State of California and the Santa Ynez Band of the Chumash Mission Indians. The Tribe and State entered into their first gaming compact in 1999 which was set to expire in December 31, 2020. In the interim period, confidential negotiations on a new compact commenced. These negotiations were solely between the State of California and the Tribe, and the County did not receive notification from the Governor's Office or from the Tribe as to the status of negotiations or completion of an agreement. As confirmed by the Governor's Office on August 30, 2015, no counties were invited into negotiations or briefed by the Governor's Office as to compact negotiations.

Informational hearings on the Compact will be held by Committees of the California State Assembly and Senate on Tuesday, September 1, 2015.

Overall, key requests by the County are addressed in the new compact, including:

- a process to ensure mitigation of impacts related to gaming projects;
- establishment of judicially enforceable agreements to enforce the mitigations;
- enhanced environmental review; and
- required negotiations with the County on the mitigations, followed by arbitration if issues are not resolved.

Like provisions have also been supported by the California State Association of Counties (CSAC) in other recently-ratified state gaming compacts.

Other issues appear not to have been addressed. The 2015 compact does not provide for the authority of local regulations or inspections for water, sewer, fire, food, and building inspection. Rather, the 2015 Compact states that “the Tribe shall also take all necessary steps to reasonably ensure that the Gaming Facility satisfies all requirements of titles 19 and 24 of the California Code of regulations applicable to similar County facilities.”

Staff is still reviewing the distribution methodology of funds to local jurisdictions to determine the expected impact on the County. The compact retains the Special Distribution Fund, which was effectively de-funded in the last year, and provides for a new formula under the Revenue Sharing Trust Fund, which allows the Tribe to make payments to the County and local jurisdictions for specified purposes as credit toward the Revenue Sharing Trust Fund. It appears the Special Distribution fund will now be used primarily for Tribes to compensate the State for the cost of the regulation of gaming activities.

Background

1999 Gaming Compacts

The State of California has legal authority to enter into gaming compacts with federally-recognized Tribes. The legal framework for Tribal-State Class III Gaming Compacts, including the framework for the Governor to negotiate and for the California Legislature to ratify these, includes: 25 U.S.C. § 2710(d), within the Indian Gaming Regulatory Act; Article IV § 19(f) of the California Constitution; and Government Code § 12012.25(c). Highly summarized, “class III gaming” refers to all forms of gaming that are not “class I gaming” (generally, social games solely for prizes of minimal value) or “class II gaming” (bingo and certain card games authorized by state law).

In 1999, the Gaming Compact between the Tribe and the State was executed that allowed for the original Chumash Casino project and up to 2,000 class III gaming devices. (The 2015 compact allows for up to 2,500 class III devices). The 1999 Compact did not provide adequate provisions for local government involvement or mitigation for gaming projects. More recent tribal gaming compacts had addressed some of these deficiencies. The Governor’s Office was reportedly negotiating with Tribes that were parties to the 1999 Compacts to address some of these issues.

County's Requested Changes to 1999 Compact

On October 7, 2014, staff provided the Board an update on the Tribe's casino and hotel expansion project. The Board directed the CEO to meet with the Governor's Office to express areas of concern and lack of adequate mitigation for the project. On December 11, 2014, staff and Third District Supervisor Doreen Farr met via telephone conference with Joe Dhillon, the Governor's Special Advisor for Tribal Negotiations, and Sara Drake of the State Attorney General's Office. During the meeting, the County expressed concerns with the casino/hotel expansion and the Camp 4 Fee-to-Trust projects. Further, the County expressed interest in working with the Governor's Office and the Tribe to craft compact language that improves intergovernmental relationships and addresses the impacts of tribal gaming. At that meeting Mr. Dhillon requested the County of Santa Barbara's feedback regarding the existing process.

On February 11, 2015 the County Executive Miyasato provided the letter referenced as Attachment A to the Governor's Office.

In addition to the items specifically referenced within the letter, the County also noted ongoing support for the efforts of the California State Association of Counties (CSAC) in continuing to work on behalf of all counties to promote local agreements, improve the integrity of tribal environmental review documents, insure off-reservation impacts of tribal casinos are mitigated and provide for adequate time for local governments to both comment on environmental documents and conduct meaningful negotiations.

Review of 2015 Compact

In a review of the 2015 Compact provisions and the February 11, 2015 letter provided to the Governor's Office, the following applies:

Off-reservation impacts

Request by County: Include mitigation of off-reservation impacts to the same degree as required by state and federal laws. In order to ensure consistent regulation, public participation, and environmental protection, compacts must require tribal governments operating a casino or other related business to fully analyze and mitigate all off-reservation impacts to the same degree as required by state and federal environmental laws. Further, compacts must provide a process to fairly determine whether the Tribal Environmental Impact Report (TEIR) is consistent with the National Environmental Policy Act (NEPA) and CEQA standards and provide adequate information to fully assess the impact of a project.

2015 Compact: The 2015 Compact does include the provisions for the preparation a TEIR for new projects and the need to consider existing baseline data and the environmental setting. Further the 2015 Compact includes the use of an off-Reservation environmental Impact checklist which is included in Appendix B of the 2015 Compact and referenced within Section 11.7(a)(1) of the 2015 Compact.

Authority of local/state regulations

Request by County: Tribal governments operating a casino or other business must be subject to the authority of local and state regulations concerning public health and safety issues. This must include, but not be limited, to water, sewer, fire inspection and protection, ambulance, food and building inspection, and critical law enforcement services.

2015 Compact: The 2015 compact does not provide for the authority of local regulations for water sewer, fire and food and building inspection. Rather, Section 6.4.2(b) of the 2015 Compact specifically

indicates, “Without limiting the rights of the State under this section, reference to Applicable Codes is not intended to confer jurisdiction upon the State or its political subdivisions.” Further, while other compacts such as the Fort Independence Compact specifically requires compliance with the California Building Code and the California Public Safety Code, the 2015 Compact 6.4.2 (j) states that “the Tribe shall also take all necessary steps to reasonably ensure that the Gaming Facility satisfies all requirements of titles 19 (Fire Code) and 24 (Building Code) of the California Code of regulations applicable to similar County facilities.”

However, the Section 9.4 of 2015 Compact does not impair the jurisdiction of the State and local law enforcement agencies and state courts jurisdiction to enforce the state’s criminal laws on the Tribes’ Indian lands, including the gaming facility and all related structures.

Judicially-enforceable agreements and binding arbitration to mitigate impacts

Request by County: Judicially enforceable agreements must be required to ensure impacts are fully analyzed and mitigated. Compacts must also contain provisions to impose binding arbitration on the Tribe and County if the parties cannot agree on the terms of a mutually-beneficial enforceable agreement related to mitigation of the impacts of a new or expanded casino or related project.

2015 Compact: Section 11.7-11.8 of the 2015 Compact provides language to foster government to government relationships via the requirement for enforceable intergovernmental agreements. Before the commencement of a project and no later than the issuance of the Final TEIR to the County the Tribe is required to offer to commence government to government negotiations with the County and upon the acceptance of the offer, the Tribe is required to negotiate with the County on a government to government basis and enter into enforceable written agreements. In addition, the Compact provides for binding arbitration as a means to resolve disputes. Section 11.8 (b) includes a waiver of sovereign immunity to enforce the obligation to arbitrate, enforce any arbitration award and to enforcement any judgment based on an arbitration award.

Special Distribution Fund and Revenue Sharing Trust Fund

2015 Compact (Section 4.3) - The Tribe shall continue to pay the State on a pro rata basis the cost the State incurs for the regulatory costs in an given year associated with the Compact. However, uses of the SDF fund under the new compact appear to be primarily for reimbursing state government for cost of its regulation of gaming. Payments in the 2015 Compact to local governments for fire, law enforcement, and other services now result in a credit to the Tribe for payments otherwise owed to the Revenue Sharing Trust Fund.

2015 Compact (Section 5.2) - Tribe pays 6% of Net Win from the operation of gaming devices in excess of 350 to State Gaming Agency for deposit into the Revenue Sharing Trust Fund of the Tribal Nation Grant Fund.

2015 Compact (Section 5.3) -The components of this section sets forth the methodology for payments to Revenue Sharing Trust Fund. The State will now allow the Tribe annual credits for the up to 60 % of their payment to the Revenue Sharing Trust Fund. These credits are to be used for:

- Payments by the Tribe to the County and local jurisdictions operating services and facilities within the County for improved fire, law enforcement , public transit, education, tourism, and

other infrastructure improvements intended to include serving off-Reservation needs of County residents. At least 20% of the 60% must be used for these purposes.

- Non-gaming capital investments and economic development projects by the tribe on or off tribal lands that the State indicates provides mutual benefit to the Tribe and the State due to cultural, social and environmental values are provided for. Set amounts to be dedicated to this category of funding are not provided.
- Health care services to tribal members.
- Water treatment and conservation project that serve the gaming facility or any improvements incorporating water treatment technology on real property own by the tribe or decedents.
- General welfare, education healthcare vocational purposes to non-enrolled members of the Tribe and other Native Americans in the community.

All credits not used in a given year roll to the next year to following years until exhausted. The State has the right to review proposals and exercise discretion to disapprove the use of credits.

Next steps – Ratification of the Compact

During a conversation with the Governor's Office the afternoon of Sunday, August 30, 2015, the following process was outlined as next steps:

- Informational hearings before California State Assembly and Senate Committees. These are scheduled for Tuesday, September 1, 2015.
- Vote on legislation for the Compact in both the Assembly and Senate. Legislature is adjourning September 11, 2015 and returns in January 2016.
- Formal approval and ratification of the Compact by the Governor.
- Filing of the compact with the California Secretary of State.
- Submittal of the Compact by the Secretary of State to the Federal Department of the Interior for review of consistency with federal regulations.
- Formal acceptance of the Compact by the Department of the Interior.

Fiscal Analysis

Additional time is needed to assess the fiscal impacts to local jurisdictions of the 2015 compact based on the new formulas provided under the Revenue Sharing Trust Fund.

Attachments:

- A. February 11, 2015 Letter from CEO Miyasato to Mr. Joe Dhillon
- B. Tribal-State Compact Between the State of California and the Santa Ynez Band of Chumash Mission Indians

Authored by:

Terri Nisich, Assistant County Executive Officer