

Alexander, Jacquelyne

From: Bob Field <bfield@trytorelax.org>
Sent: Monday, March 14, 2016 7:15 AM
To: sbcob
Subject: Submission for Agenda item #3, 3/15/16 BOS
Attachments: SonomaLytton Rancheria FTT agreement.pdf

Honorable Supervisors,

The attached is from the Sonoma County website, and it describes an agreement reached between Sonoma County and the Lytton Tribe regarding Fee to Trust. The key terms of this agreement include:

- > A prohibition on gaming on the property;
- > Tribe will comply with General Plan and Zoning Ordinances, except for winery/ resort and housing within Windsor UGB.
- > Payment of very significant in-lieu taxes and development impact fees to support public services;
- > Compliance with California fire and building codes;
- > Full mitigation of off-site impacts of the Tribe's projects, including traffic, and oak tree loss; and
- > Enforceability of the Agreement through a waiver of sovereign immunity and binding arbitration to determine any disputed mitigation measures.

It should be noted that the Ad hoc Subcommittee was offering a far more generous deal, and that the tribal government was moving further away from agreement as the meetings went on.

Respectfully,

Bob Field
Santa Ynez



Sonoma County MOA Fact Sheet Regarding Lytton Rancheria Residential Development and Fee-to-Trust Project

On May 21, 2015, Congressman Jared Huffman introduced H.R. 2538 – The Lytton Rancheria Homelands Act of 2015, to take approximately 500 acres of land into trust on behalf of the Lytton Tribe near the Town of Windsor.

On May 27, 2015, Governor Brown wrote to Congress supporting the legislation, affirming that the Act provides “the framework for mutually beneficial cooperative efforts that protect the Tribe’s sovereignty as well as the vital interests of Sonoma County residents” if land was taken into trust.

Prior to the introduction of this legislation, on March 10, 2015, during a public meeting of the Sonoma County Board of Supervisors, the County of Sonoma entered into a [Memorandum of Agreement with the Tribe \(PDF: 2.2 MB\)](#). This Agreement was created to ensure that “should the land go into trust either through a congressional or administrative process,” there would be:

1. A prohibition on gaming on the property;
2. Payment of in-lieu taxes and development impact fees to support public services;
3. Compliance with California fire and building codes;
4. Full mitigation of off-site impacts of the Tribe’s projects, including traffic, and oak tree loss; and
5. Enforceability of the Agreement through a waiver of sovereign immunity and binding arbitration to determine any disputed mitigation measures.

Complex Federal Indian law and policy govern the taking of land into trust by tribes. And while local government has no authority and limited influence on such decisions, there are efforts that can be made to help ensure that the off-reservation impacts of any such projects are borne by the Tribe and not the community. The facts below are intended to provide a context as to the various intergovernmental agreements entered into between the Tribe and local Sonoma County governments. Additionally, they underscore the overall assessment of the County that the land would be taken into trust by the federal government and that the Agreement was the only way to ensure that gaming would be prohibited and the off-reservation impacts would be fully addressed. Further, the negotiated elements provided a framework for a mutually beneficial intergovernmental relationship with the Tribe.

Background

1. **Recent Lytton Tribe History in Sonoma County.** The tribe now known as the Lytton Rancheria of California was originally recognized by the United States with land north of Healdsburg. It was dissolved in 1958 with the passage by Congress of the Rancheria Act, which resulted in the loss of its lands. In 1987, Lytton joined with three other tribes in a lawsuit against the United States challenging its termination and, in 1991, entered into a judicially approved settlement agreement which restored its federal recognition.
2. **1991 Judicial Settlement Agreement.** In 1991, when the judicial settlement agreement was entered, there was no gaming in Sonoma County and no tribe in the County had ever submitted an application to take land into trust, much less acquire trust land remote from its original Rancheria property. Gaming did not become legal in California until the passage of Proposition 5 in 2000, at which time the Dry Creek Rancheria announced plans for what became the River Rock Casino. The 1991 settlement agreement resolved litigation against the federal government

Contact Information

Board of Supervisors
County of Sonoma

Office Hours
Monday – Friday
8:00 AM – 5:00 PM

Contact Us
Website
Phone: (707) 565-2241
CA Relay Service: 711
Fax: (707) 565-3778

575 Administration Drive
Room 100 A
Santa Rosa, CA 95403

[Google Maps™ Directions](#)
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to re-recognize the Tribe as a sovereign government. The County intervened in the lawsuit and was a peripheral party but helped secure protections related to land use, specifically:

1. The tribe needed to follow the County General Plan for land *within* the prior Rancheria area (the most likely locations for a trust application at the time); and
2. There could not be any gaming or high stakes bingo (then under consideration) in the Alexander Valley (including the prior Rancheria).

The specific development limitations negotiated in the 1991 settlement did not apply to the area currently under consideration in H.R. 2538.

3. **Broken Fee to Trust Process.** The County of Sonoma, directly and through the California State Association of Counties (CSAC), has been on the forefront of seeking change in the broken federal fee to trust process that gives little weight to local community and government concerns. Bureau of Indian Affairs' (BIA) processing of trust applications, particularly those for non-gaming and housing, has been criticized for resembling a "Rubber-Stamp" exercise in a recent study by the Pepperdine Law Review (<http://digitalcommons.pepperdine.edu/plr/vol40/iss1/6/>).

The Board of Supervisors has worked diligently over the past 15 years to ensure that the impacts of proposed tribal developments – for all five of the federally recognized tribes in the County – are fully borne by the tribe and has consistently opposed trust applications where intergovernmental agreements are not reached. This is important because once land is taken into trust by the United States on behalf of a tribe, the land is effectively annexed, with the attendant loss of land use and taxing authority. Further, nothing in current law prevents a tribe from changing the use identified in its trust application once the land goes into trust.

4. **Lytton's Initial Trust Application and National Environmental Policy Act (NEPA) Review.** In 2002, the Sonoma County Board of Supervisors adopted a Resolution stating that if the Tribe were to submit a trust application that was inconsistent with the General Plan, and where mitigation efforts could not be made to bring the proposed project within substantial compliance with the General Plan, the County would use the most effective legal or regulatory means to oppose the application. In 2007, in an effort to reestablish a tribal homeland and develop member housing, Lytton applied to the federal government to have 124 acres taken into trust southwest of the Town of Windsor.

Development on this land, if it went into trust, would not have been subject to the California Environmental Quality Act (CEQA) nor require a County use permit. The project was subject to NEPA review (federal environmental review) and, after hearings and opportunity for public testimony, the County submitted comments critical of the environmental review in 2009, 2011, and 2012. The County's focus, working with residents who would be neighbors to the proposed 124 acre housing project, was to ensure that the environmental review fully and fairly analyzed the environmental effects of the project and provided for adequate mitigation for such issues as loss of oak woodlands, traffic, waste discharge, and water use.

5. **Potential Litigation and Settlement Discussions.** Given inadequacies of the original NEPA analysis, the County embarked on a parallel process both preparing for litigation and trying to resolve its concerns with the Tribe's proposal. As is authorized under the Brown Act, these discussions regarding potential litigation and settlement options were conducted in closed session. These negotiations took on more urgency due to the Tribe's efforts to find a legislative solution to move its proposal forward and efforts in Congress (supported by the Obama Administration) to overturn a Supreme Court decision (*Carciari*) which appeared to be a barrier for the Tribe to successfully take land into trust administratively.
6. **Public Engagement.** The County worked closely with neighbors related to the original 124 acre residential housing project trust application. This included numerous meetings to discuss project impacts and community concerns. The Board held public hearings, which included neighbor input, related to its approval of comments to the Environmental Assessment and more recently in approving its Memorandum of Agreement with the Tribe. The County acknowledges that as the scope of the proposal grew the neighbors and other interested parties would have liked to have more notice and involvement in the settlement discussions.
7. **County Negotiation Objectives.** A prime focus of County negotiations regarding fee to trust applications is to ensure that the off-reservation project impacts are fully mitigated and to limit gaming. With respect to

the Lytton application, the contours of the Tribe's proposal changed over time as it acquired additional acreage from the original 124 acre housing project. With holdings of at least 500 acres the County's goals included ensuring no casino development; obtaining property tax equivalents to support County services to the area; adequate environmental review for future projects; overall substantial compliance with the General Plan; waiver of sovereign immunity to ensure agreement enforceability; and mitigation of identified impacts.

8. **County Agreement.** After lengthy good faith negotiations, and a public hearing, on March 10 2015, the Board of Supervisors approved entering into the Memorandum of Agreement (MOA) with the Tribe to assure that, should the land be taken into trust, either by legislative or administrative action, the County strategic mitigation goals would be achieved. The grid at the end of this document summarizes the key terms.

9. **Other Relevant Agreements between the Tribe and Local Authorities.** The Town of Windsor has consulted with the Tribe surrounding potential community benefits to the Town *if extensions of water and/or sewer are approved by popular vote. This vote does not determine whether or not the land is transferred into trust (which is a federal action), but rather whether the Tribe will utilize Windsor utilities or construct their own wastewater treatment facility at the edge of the Town.* The Tribe has entered into separate agreements with the Windsor Fire Protection District and the Windsor Unified School District to provide for mitigation of off-reservation impacts of its primarily housing development should the land be placed into trust by the federal government.

Conclusion

Like agreements between the Tribe and other local government bodies, the MOA protects the community in the likely eventuality that the tribally owned land is taken into trust by the federal government. It is viewed as a model Agreement which, while respecting tribal sovereignty, in important respects provides for compliance with the General Plan and ensures environmental review and off-reservation mitigation of impacts for projects that are inconsistent. The MOA therefore not only prevents gaming and ensures appropriate mitigation but provides a framework for a constructive intergovernmental relationship with the Tribe into the future.

MOA Term Summary

Mitigation Payments

Issue	Memorandum of Agreement
Ongoing payments of in-lieu property taxes.	30% of 1% of assessed valuation for all lands in trust. Valuation updated every five years.
Ongoing payments of in-lieu Transient Occupancy Tax (TOT).	9%, plus future Countywide increases.
Total one-time in-lieu fees and mitigation payments.	\$6 million one-time payment in lieu of normal impact fees, including traffic, park, and affordable housing fees as well as an up-front payment to compensate for mitigation related to loss of Blue Oak trees.
Community benefit and environmental review for potential winery/resort project.	If a winery/resort is pursued by the Tribe, the Agreement provides for public input by mandating an Environmental Impact Study (EIS), and formal negotiations to ensure that off-reservation impacts are fully identified and mitigated along with an additional community benefit contribution. Any disagreements to be resolved by binding arbitration.
Administrative cost reimbursement.	One-time payment of \$100,000.

Gaming prohibition

Issue	Memorandum of Agreement
Gaming prohibition.	No gaming in Sonoma County for term of Agreement (22 years). [H.R. 2538 contains permanent ban.]

Other Environmental Issues

Issue	Memorandum of Agreement
General Plan and Zoning Ordinance consistency.	Tribe will comply with General Plan and Zoning Ordinances, except for winery/ resort and housing within Windsor UGB.
Environmental review and mitigation.	EIS for winery/ resort; NEPA review for other properties. Mitigation through negotiations backed by binding arbitration to resolve disputes.
Mitigation monitoring.	Independent monitoring reports.
Dispute resolution process.	Meet and confer, backed by binding arbitration.
Use of residential project	Housing only for tribal members with exception that up to 10% of units may be leased to Tribal employees.
Solid waste.	Tribe agrees to use County's franchised hauler.
Maintain Rural Character.	Landscape screening and other measures to maintain rural character.
Water and Sewer.	Additional specified mitigation if Town ballot measure fails.
Building and Fire Codes.	Comply with California Uniform Codes with opportunity for County review of building plans.
Future Intergovernmental Meetings.	Board of Supervisors and Tribal Council members to meet at least once per year.
Limited Waiver of Sovereign Immunity.	Tribe waives sovereign immunity which ensures that the Agreement is enforceable.

Board of Supervisors

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