



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 30, 2016
Placement: Departmental
Estimated Time: 1 hour
Continued Item: No
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors

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

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

SUBJECT: Status Report on Discussions with the Santa Ynez Band of Chumash Indians
Regarding Waiver of Sovereign Immunity Language and Ad Hoc Subcommittee
Meetings

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 report from staff regarding status of discussion pertaining to Waiver of Sovereign Immunity language for inclusion in a potential agreement between the County of Santa Barbara and the Santa Ynez Band of Chumash Indians, and;
- b. Provide direction as appropriate regarding discussions between the Ad hoc Subcommittee of the Board of Supervisors and 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 discussions between County Counsel and legal representatives of the Santa Ynez Band of Chumash Indians pertaining specifically to Waiver of Sovereign Immunity language for a potential - agreement between the County of Santa Barbara and the Santa Ynez Band of Chumash Indians, on the 1,400 acres known as Camp 4, and to seek full Board direction as appropriate.

Background

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 (Tribe) 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 on several items had been reached as of the February 2016 meeting between the Tribe and the Ad hoc Subcommittee. Specifically, the Ad hoc Subcommittee and the Tribe did not reach agreement on the Waiver of Sovereign Immunity which is essential to an enforceable agreement with the Tribe. Therefore, on March 15, 2016 the Ad hoc Subcommittee returned to the full Board of Supervisors for direction on next steps.

At that time, the Board was provided an overview on progress in each of the focus areas for discussion which included:

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

An overview of the status of each focus areas is provided in *Attachment A*. On March 15, 2016 the Board directed the following:

Directed County Counsel to work with Santa Ynez Band of Chumash Indians to develop Sovereign Immunity enforceability language that is appropriate for the County and the Board and further directed that once that is accomplished to consider scheduling meetings of the Ad hoc Subcommittee

Since the March 15, 2016 meeting, County Counsel met regularly with Tribal Legal Representative, Sam Coñer. As a result of these discussions, the language presented in *Attachment B* is recommended for inclusion within a future Agreement. In summary the draft waiver includes that:

- The Tribe “expressly and irrevocably waives for the term of this Agreement its right to assert sovereign immunity”;
- The County agrees that the Government Claims Act applies to the County. The Government Claims Act provides immunity for individual Supervisors (Gov. Code Section 820.9); and,
- There are specific exemptions from suit for individual county employees and officials as well as Tribal members. Section (c) states: “No action, claim, or proceeding may be brought against any member, official, elected official, director, employee or agent (including any attorney) of the Tribe to enforce this Agreement.” Section (d) states: “No action, claim or proceeding may be

brought against any member of the Board of Supervisors of the County public official, elected official, and appointed official or employee or agent to enforce this Agreement.”

At the time of docketing of this Board Letter, the Tribal members are considering approval of the Waiver language through a vote on the Sheriff's draft Contract for Law Enforcement Services between the County and the Tribe. The outcome of the vote is not yet known, but staff will report the results at the Board hearing. Any final agreement between the County and Tribe must be approved by the Board of Supervisors and the Tribe.

The Ad hoc Subcommittee discussions are a result of a Fee-to-Trust application by the 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 are still pending. The Tribe has also sought approval of the acquisition through proposed legislation in the House of Representatives (HR 1157). Since the Board of Supervisors meeting of March 15, on July 13, 2016 the full House Committee on Natural Resources approved H.R. 1157 by a vote of 29-1, with Congresswoman Capps' being the only no vote. The next step is consideration and a vote by the full House which is anticipated in September. Should the House approve the legislation, it would then be referred to the Senate. However, nothing has been scheduled in the House as of the preparation of this report.

Ad Hoc Subcommittee of the Board of Supervisors and Discussions with the Santa Ynez Band of Chumash Indians –Next Steps

As noted, 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 Ad hoc Subcommittee meetings with the Tribe are conducted consistent with the Brown Act and open to the public. The Ad hoc Subcommittee has clearly indicated the County's position regarding the terms of a future Agreement. In addition the Ad hoc Subcommittee has indicated the need for the full Board of Supervisors to approve any future Agreement. While some progress has been made in several areas, as referenced in *Attachment A*, a number of items remain unresolved. However, should the Board and the Tribe approve the Waiver of Sovereign Immunity language provided within this report; a foundational issue to the discussions will be resolved.

In order to continue to work to secure a mutually beneficial and enforceable agreement with the Tribe, the Ad hoc Subcommittee will continue to meet with Tribal representatives. All meetings are noticed consistent with the Brown Act. County and Tribal staff confer on the agenda and materials prior to each meeting. The Ad Hoc Subcommittee may also refer potential terms of the agreement to staff for discussion and refinement with the Tribe as appropriate. Any final Agreement between the County and Tribe must be approved by the Board of Supervisors and the Tribe. Ad hoc Subcommittee meetings with the Tribe will again be set monthly. The next meeting of the Ad hoc Subcommittee and the Tribe is tentatively scheduled for September 8, 2016 from 10 a.m. to 12 p.m. at location to be announced. All information pertaining to upcoming Ad hoc Subcommittee and Tribal meetings can be found at <http://www.countyofsb.org/tribal-matters.sbc>.

Performance Measure: N/A

Fiscal and Facilities Impacts: N/A

Key Contract Risks: N/A

Staffing Impacts: N/A

Legal Positions:

Attachments:

- A. Overview Status of Discussions
- B. Draft Waiver of Sovereign Immunity Language
- C. Term Sheet Matrix

Authored by:

Terri Nisich, Assistant CEO