



# COUNTY OF SONOMA

575 ADMINISTRATION  
DRIVE, ROOM 102A  
SANTA ROSA, CA 95403

## SUMMARY REPORT

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**Agenda Date:** 6/6/2023

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**To:** Board of Supervisors

**Department or Agency Name(s):** County Administrator, County Counsel

**Staff Name and Phone Number:** Marissa Montenegro 707-565-2431, Sita Kuteira 707-565-2421

**Vote Requirement:** Majority

**Supervisorial District(s):** Second

**Title:**

Amended and Restated Intergovernmental Mitigation Agreement with the Federated Indians of Graton Rancheria.

**Recommended Action:**

A) Approve Amended and Restated Intergovernmental Mitigation Agreement (IMA) with the Federated Indians of Graton Rancheria.

B) Authorize the Board of Supervisors Chair to execute the Amended and Restated IMA.

(Second District)

**Executive Summary:**

The Federated Indians of Graton Rancheria (Tribe) recently negotiated a new compact with the State (2023 Compact). The compact requires approval by the California legislature and the U.S. Secretary of the Interior. The compact was ratified by the Governor on May 22, 2023, and has yet to be approved by the US Secretary of the Interior.

As a result of the Tribe's expansion project and the new 2023 compact, the County and Tribe have negotiated a fully amended and restated intergovernmental agreement that would replace the 2012 IMA and 2019 Amendment. The new proposed IMA continues an equivalent amount of recurring payments (\$14.5 million) adjusted annually by CPI to mitigate direct impacts of the Resort and Casino related to public safety, health and human services, traffic, affordable housing, greenhouse gases, fire services, tourism, transportation, and groundwater. It also establishes annual community benefit payments for Regional Parks and the Agricultural Preservation and Open Space District as a set amount of \$7 million. Note, these payments will start at \$3 million and adjust to the \$7 million set amount once the Tribe's expansion is completed.

Staff recommend that your Board authorized the Chair to execute the proposed Amended and Restated IMA with the Federated Indians of Graton Rancheria.

**Discussion:**

**Background**

The Federated Indians of Graton Rancheria (Tribe) is a federally recognized tribe with 254 acres of land held in trust by the federal government located in the unincorporated County west of Rohnert Park. When land is taken into trust, that area is essentially annexed by the federal government and local governments lose all land

use and taxing authority that would otherwise minimize and mitigate impacts of development on the surrounding community. To address this, the County has worked with tribes to negotiate intergovernmental agreements that ensure mitigation of off-reservation impacts caused by the land being taken into trust and subsequently developed. These agreements have been critical to fostering positive intergovernmental relationships.

### **Graton Resort & Casino Development and Current Agreements**

The development of the Graton Resort & Casino has occurred in phases. Phase I included the construction of a 317,750 sq. ft. casino and entertainment space, with approximately 100,000 sq. ft. dedicated to gaming, including up to 3,000 slot machines. This phase also included entertainment space including numerous restaurants and bars, a nightclub, lounge, and banquet facilities, and a multi-level parking structure and surface parking for some 5,000 spaces. Phase I was completed and opened to the public in November 2013. Phase II development included a 200-room hotel, convention center, pool, and spa, and opened in November 2016.

On October 23, 2012, the County and the Tribe entered into the current Intergovernmental Mitigation Agreement (2012 Agreement) to address offsite impacts of the Graton Resort & Casino. The Agreement includes environmental mitigation measures and mitigation payments related to public safety, fire protection, groundwater, traffic, aesthetics, biological resources (minimizing erosion, runoff, and vegetation removal), and open space and agricultural lands protection.

On November 1, 2016, the Tribe released a Notice of Preparation for the Phase III expansion which included the development of an additional 200 hotel rooms, new meetings rooms, and the expansion of the banquet area, mezzanine transfer space, back of house space, and circulation space. The County submitted comments to the Draft Tribal Environmental Impact Report (TEIR) for this project on May 24, 2017, stating the County's desire for continued groundwater monitoring, provision of additional affordable housing, reduction of greenhouse gas emissions with a solar energy system, increased landscaping and screening of the Resort, and minimizing impacts of construction traffic. The Tribe and County met to discuss comments and the Final TEIR was released on January 25, 2018. To agree on mitigation measures for the expansion and resolve disputes related to a 2013 memorandum of understanding with the City of Rohnert Park, the County and the Tribe executed a first amendment to the 2012 IMA on December 31, 2019. However, the Tribe did not proceed with the proposed expansion project.

On May 1, 2019, the Tribe issued a Notice of Preparation of a TEIR for an expansion to the Resort & Casino back of house space. The Draft TEIR was released on July 19, 2019, the County submitted comments on September 18, 2019, and a Final TEIR was released on September 19, 2019. The parties entered into a separate intergovernmental mitigation agreement also on December 31, 2019, to agree to environmental mitigation measures and mitigation payments to address the offsite impacts of the development.

### **Proposed Resort & Casino Expansion**

In December of 2022, the Tribe solicited comments on a Draft TEIR for a revised expansion project that proposes expanding the hotel, gaming floor, and parking garage, and adding a theater and rooftop restaurant. The County reviewed the Draft TEIR and submitted comments in February 2023. The Final TEIR was released on May 8, 2023. The 2012 Compact requires environmental review and an intergovernmental mitigation

agreement for certain tribal development projects, including expansion of the casino. The Draft and Final TEIR are available at [www.gratonteir.com](http://www.gratonteir.com) <<http://www.gratonteir.com>>.

### **2023 Tribal-State Gaming Compact**

The Indian Regulatory Gaming Act (IGRA) confers authority on the states to enter into gaming compacts with tribes prior to tribes being authorized to operate class III gaming facilities. IGRA establishes the topics that may be the subject of compact negotiations, requires states to negotiate in good faith, and delegates authority to the Secretary of the Interior to review compacts and ensure their compliance with IGRA. In 2021 and 2022, the Secretary of the Interior disapproved a number of California compacts on the basis that the topic areas exceeded the scope of permissible subjects under IGRA. Following these disapprovals, the Ninth Circuit similarly held that in the case of the compacts at issue the State had failed to comply with IGRA and negotiate in good faith by attempting to require certain compact provisions related to family law, environmental regulation, and tort law.

With the intent of bringing the Tribe's compact into conformance with recent case law and decisions by the Secretary of the Interior, the State and the Tribe recently negotiated a new tribal-state gaming compact (2023 Compact). The compact was approved by the California legislature and then ratified by the Governor on May 22, 2023. Following ratification, the compact must be submitted to the Secretary of the Interior after which the Secretary has 45 days to approve or disapprove the compact. If the Secretary fails to act, then the compact is considered to have been approved. The compact then becomes effective when the notice of approval is published in the Federal Register, which must occur within 90 days.

The 2023 Compact would impact the parties' performance under the 2012 IMA and thus it is desirable to maintain consistency. Notably, the 2023 Compact does not include the Graton Mitigation Fund that was created by the 2012 Compact. The 2012 Compact has required the Tribe to pay a certain percentage of net win into the Graton Mitigation Fund, which was then distributed by the State to the City of Rohnert Park and the County in accordance with the compact and the respective intergovernmental agreements. Instead, the 2023 Compact recognizes the impact that tribal gaming facilities have on neighboring jurisdictions and directs the Tribe to enter into intergovernmental agreements that directly address mitigation.

### **2023 Amended and Restated Intergovernmental Mitigation Agreement**

As a result of the Tribe's modified expansion project and the new 2023 compact, the County and Tribe have negotiated a fully amended and restated intergovernmental mitigation agreement that would replace the 2012 IMA and 2019 Amendment.

The proposed Amended and Restated IMA includes the following provisions and changes:

- Continues an equivalent amount of recurring payments (\$14.5 million) adjusted annually by CPI to mitigate direct impacts of the Resort and Casino related to public safety, health and human services, traffic, affordable housing, greenhouse gases, fire services, tourism, transportation, and groundwater. □
- Removes category-specific amounts so mitigation funds can be spent more efficiently on any listed mitigation category.
- The 2012 IMA provides for up to \$25 million in community benefit payments to Regional Parks and the Agricultural Preservation and Open Space District, though how much the County receives depends on the amount paid into the Graton Mitigation Fund. The County only recently began receiving these payments and this fiscal year is projected to receive approximately \$1,000,000. The Amended and

Restated IMA would reduce annual community benefit payments to Parks and Open Space from up to \$25 million to \$7 million but guarantees a set amount. Payments would start at \$3 million and increase as the expansion project is completed.

- Removes undefined community benefit programs contribution and passthrough community benefits payments.
- Removes mitigation monitoring for the current Resort and Casino. Tribe agrees to implement the mitigation measures in the TEIR for the expansion.
- Removes provisions covered under the Compact, such as those related to alcohol service and smoking.
- Removes provisions that have been or will soon be completed, such as non-recurring pre-opening payments, non-recurring payments after opening, land transfer to Sonoma Land Trust, and Williamson Act compliance.

### **Fee to Trust Application**

In 2019, the Tribe submitted a fee to trust application to the Bureau of Indian Affairs to have 48.8 acres of land contiguous to the Rancheria taken into trust, including land located between the Casino & Resort within Rohnert Park's city limits and parcels within the unincorporated County. The proposed development included a Tribal employee housing complex of approximately 930 units. This application was later withdrawn.

On December 2, 2022, the County received a Notice of Non-Gaming Land Acquisition Application from the US Department of the Interior requesting comment on an application to take 73.817 acres contiguous to the Rancheria into trust, including the parcels that were previously part of the 2019 application. The parcels are currently undeveloped open space and the Tribe proposed to maintain it as such to ensure a buffer from undesirable development and for environmental mitigation and preservation. The County responded with comments on January 31, 2023 but did not oppose the application. On May 30, 2023, the County received notice from the BIA that the lands had been accepted into trust. In doing so the BIA found that environmental review under the National Environmental Policy Act (NEPA) was not required and approved a categorical exclusion. This fee to trust application is not directly addressed in the proposed Amended and Restated IMA, except that the parties have generally agreed to meet and confer and attempt in good faith to resolve any concerns with fee to trust applications.

### **Strategic Plan:**

N/A

### **Racial Equity:**

#### **Was this item identified as an opportunity to apply the Racial Equity Toolkit?**

No

### **Prior Board Actions:**

12/17/2019 - Approved First Amendment to the 2012 Graton Rancheria Intergovernmental Agreement and Intergovernmental Agreement Regarding the Federated Indians of Graton Rancheria Back of House Expansion Project

10/23/12 - Approved the Comprehensive Intergovernmental Agreement with the Federated Indians of Graton Rancheria.

### **FISCAL SUMMARY**

<b>Expenditures</b>	<b>FY 22-23 Adopted</b>	<b>FY23-24 Projected</b>	<b>FY 24-25 Projected</b>
Budgeted Expenses		\$10,845,000	
Additional Appropriation Requested		\$6,655,000	\$17,500,000 <sup>1</sup>
<b>Total Expenditures</b>		\$17,500,000	\$17,500,000
<b>Funding Sources</b>			
General Fund/WA GF			
State/Federal			
Fees/Other		\$17,500,000	\$17,500,000 <sup>1</sup>
Use of Fund Balance			
Contingencies			
<b>Total Sources</b>		\$17,500,000	\$17,500,000

<sup>1</sup> CPI Adjustment Unknown / Not Applied Yet

**Narrative Explanation of Fiscal Impacts:**

Most of the total expected ongoing payment have been included in the FY 23-24 budget. Staff will return later in the year with a review of updated Tribal funds and present use of funds recommendations.

**Narrative Explanation of Staffing Impacts (If Required):**

N/A

**Attachments:**

Attachment A: Proposed Amended and Restated Intergovernmental Mitigation Agreement with Federated Indians of Graton Rancheria

**Related Items "On File" with the Clerk of the Board:**

2012 Intergovernmental Mitigation Agreement with Federated Indians of Graton Rancheria  
First Amendment to the 2012 Graton Rancheria Intergovernmental Mitigation Agreement