



## SUMMARY REPORT

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**Agenda Date:** 12/17/2019

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**To:** Board of Supervisors

**Department or Agency Name(s):** County Administrator's Office and 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:**

First Amendment to the 2012 Graton Rancheria Intergovernmental Mitigation Agreement and Intergovernmental Agreement Regarding Federated Indians of Graton Rancheria Back of House Expansion Project

**Recommended Action:**

Authorize the Chair to execute:

- A. the First Amendment to the 2012 Intergovernmental Mitigation Agreement with the Federated Indians of Graton Rancheria
- B. the Intergovernmental Mitigation Agreement Regarding the Federated Indians of Graton Rancheria Back of House Expansion Project.

**Executive Summary:**

The County of Sonoma and the Federated Indians of Graton Rancheria negotiated a 2012 Intergovernmental Mitigation Agreement to address onsite and offsite impacts of the Graton Resort & Casino Development. In 2013, the Tribe and the City of Rohnert Park entered into a First Amended and Restated Memorandum of Understanding, which significantly amended the Tribe's 2003 Memorandum of Understanding with the City which the County disputed.

In 2016, the Tribe informed the County of the intention to expand and 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 Tribe and County met to discuss county and public comments and the Final TEIR was released on January 25, 2018.

The proposed First Amendment to the 2012 Intergovernmental Mitigation Agreement with the Tribe memorializes agreed upon resolutions to existing disputes in addition to enforcement of the Mitigation Measures identified in the Final Tribal Environmental Impact.

In May of 2019, the Tribe solicited comments on a draft Tribal Environmental Impact Report (TEIR) for a proposed back of the house expansion project at the Resort. The back of the house expansion that is the subject of the current TEIR would include the demolition of approximately 3,000 sf of existing BOH space and the construction of approximately 12,000 sf of new BOH space on the western (back) side of the Resort. The County responded with comments which were addressed in the Final TEIR.

The County and Tribe have negotiated an Intergovernmental Agreement regarding the Back of House Expansion Project. The agreement enforces the mitigation measures in the Final TEIR in addition to a required one-time payment of \$20,440 from the Tribe to the County in in-lieu development fees.

Staff recommend that your Board authorize the Chair to execute the First Amendment to the 2012 Intergovernmental Mitigation Agreement with the Federated Indians of Graton Rancheria and the Intergovernmental Mitigation Agreement Regarding the Federated Indians of Graton Rancheria Back of House Expansion Project.

**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. The Tribe currently operates the Graton Resort and Casino and is seeking to expand the hotel. Since development on trust land is not subject to local land use regulations or taxation, over the past decade, the County of Sonoma has engaged with the Tribe to address the offsite impacts of development on the Reservation and to ensure the costs required to mitigate those impacts are not borne by the community.

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. 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.

On October 23, 2012, the County and the Tribe entered into the Intergovernmental Mitigation Agreement (2012 Agreement) to address onsite and offsite impacts. The Agreement included environmental protection and mitigation related to groundwater monitoring, traffic, aesthetics, biological resources (minimizing erosion, runoff, and vegetation removal), and open space and agricultural lands protection. The County recognizes that the Tribe has already agreed to some mitigations, and has suggested further mitigation related to the new development and ongoing impacts of the Resort.

**Rohnert Park Agreement Dispute**

On March 26, 2013, the Tribe and the City of Rohnert Park entered into a First Amended and Restated Memorandum of Understanding (the "2013 City MOU"), which significantly amended the Tribe's 2003 Memorandum of Understanding with the City to mitigate the Project impacts within the City and make investments in and contributions to the City community. On March 29, 2013, the County notified the Tribe of its objection to the 2013 City MOU, which the County alleged significantly defunded and undermined the purposes of the Agreement. The Tribe did not agree with the County's objection and allegations regarding the 2013 City MOU.

The Tribe, County, City, and representatives of the Governor's Office engaged in a series of negotiations to resolve the dispute. The State Gaming Agency has administered payments from the Graton Mitigation Fund with the understanding that such payments are not precedent setting with respect to the dispute, and is awaiting the outcome of the parties' attempts to successfully negotiate a resolution.

### **Graton Resort & Casino Development and Expansion**

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 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. Draft and Final TEIR are available at [www.gratonteir.com](http://www.gratonteir.com).

### **Fee to Trust Application**

The Tribe subsequently notified the County of intent to submit an application to the United States to have certain lands contiguous to the Tribe's reservation taken into trust for the benefit of the Tribe. The Tribe intends to work with the Bureau of Indian Affairs of the US Department of the Interior to complete an evaluation of the environmental impacts of the Fee to Trust Application pursuant to the National Environmental Policy Act.

On November 22, 2019, the Tribe submitted their fee to trust application to the Bureau of Indian Affairs to have 48.8 acres of land contiguous to the Rancheria taken into trust. Approximately 41.1 acres is located between the casino and resort within Rohnert Park's city limits. The remaining 7.7 acres are located on Wilfred Avenue within the unincorporated County. The proposed project includes a Tribal employee housing complex of approximately 930 units located on the property directly east of the resort and casino. The planned complex would provide a range of affordable housing options and a daycare center, primarily for employees of the resort. The application letter does not indicate that any development is planned for the parcels currently within in the unincorporated county.

The Tribe plans to provide the County a draft Environmental Assessment of the fee to trust application and housing complex project in mid-January. Staff will review the assessment, develop a plan for public outreach and return to your Board for your approval of comments.

### **First Amendment to the 2012 Intergovernmental Mitigation Agreement**

The proposed First Amendment to the 2012 Intergovernmental Mitigation Agreement with the Tribe memorializes agreed upon resolutions to existing disputes in addition to enforcement of the Mitigation Measures identified in the Final Tribal Environmental Impact.

Section 11.8.7(a) of the Compact requires that, before the commencement of a Project, the Tribe shall enter into an enforceable written agreement with the County with respect to the timely mitigation of any Significant

Effects of the Project on the Environment. The Tribe and County agree that this Amendment will satisfy the intergovernmental agreement required under Section 11.8.7 of the Compact with regard to the Expansion Project and the Final TEIR.

The County and Tribe have agreed to enforce the Mitigation Measures identified in the Final TEIR. The County has a particular interest in the following Mitigation Measures:

3.2-1 (Design Elements), 3.2-2 (Lighting Restrictions), 3.6-1 (GHG Reduction Measures), 3.8-2 (Water-Saving Fixtures), 3.8-3 (Well Monitoring), 3.13-1 (Construction Traffic Management Plan). The County and Tribe also agree that the Tribe will examine and implement the more feasible of the two reclaimed water alternatives identified in Mitigation Measure 3.8-4.

The proposed amendment includes the following provisions which address the Phase III expansion, establish an agreement to negotiate related to the fee to trust application, and resolve the County and Tribe's dispute surrounding the 2013 City MOU through the following measures:

### **1. Hotel Expansion Project**

Agreement makes enforceable the mitigation measures in the Final Tribal Environmental Impact Report ("Final TEIR"), including those related to design, lighting, GHG reduction, water-savings, well monitoring, and construction traffic management. Additional hotel rooms will be subject to the TOT in lieu under the 2012 IMA.

### **2. One-Time Payment Forgiveness**

The Tribe paid the County \$3.27 million in one-time payments required by Section 2(a) of the Agreement ("One-Time Payment") and Section 5(e) of the Agreement requires that the County reimburse the Tribe for the One-Time Payment.

Proposed Amendment:

- Upon approval of the application to have lands taken into trust, the Tribe agrees to forgive \$1 million of the One-Time Payment due to be reimbursed to the Tribe under Section 5(e) of the Agreement.
- The County and Tribe agree to further discuss the obligation of the County to repay the remaining \$2.27 million of the One-Time Payment due to be reimbursed to the Tribe under Section 5(e) of the Agreement.

### **3. Transient Occupancy Tax In Lieu**

Section 3(f) and 5(a) of the Agreement require that the Graton Mitigation Fund be used to pay \$700,000 per annum to the County in lieu of the County Transient Occupancy Tax, following the opening of a hotel at the Gaming Facility and based on 200 hotel rooms. The Agreement also requires that this payment would increase in an amount proportional to any increased number of additional future hotel rooms.

Proposed Amendment:

- The Tribe agrees to guarantee the TOT In Lieu Payment in any quarter where the Graton Mitigation Fund is insufficient to fully fund the payment. The Tribe also agrees to backfill the TOT In Lieu Payment deficiencies in prior quarters in the amount of \$770,015.33.

### **4. Charitable Contribution**

The Tribe agrees to designate the County as the recipient of 50% (fifty percent) of each recurring cash contribution required under Section 4.2.2 of the 2013 City MOU. This will result in an annual payment of

approximately \$500,000 plus CPI from the Tribe to the County to be used toward mitigation.

#### **5. No Further Amendments to 2013 City MOU**

The Tribe agrees that it will not further amend the 2013 City MOU in any way that will have a financial impact on the County, the Agreement, this Amendment, or any other agreements with the County that may arise out of negotiations concerning the Project and the Expansion Project, without prior consultation with and written approval from the County.

#### **6. Release of County Claims Relating to 2013 City MOU**

The County agrees to release all claims related to the 2013 City MOU.

#### **7. Fee to Trust Application**

The Tribe agrees to meet and confer with the County on the Fee to Trust Application and Environmental Assessment in order to enter into an IMA.

#### **Back of the House Expansion**

In May of 2019, the Tribe solicited comments on their draft Tribal Environmental Impact Report (TEIR) for a proposed back of the house expansion project at the Resort. The back of the house expansion that is the subject of the current TEIR would include the demolition of approximately 3,000 sf of existing BOH space and the construction of approximately 12,000 sf of new BOH space on the western (back) side of the Resort. On September 18, 2019, the County submitted a comment letter stating the County's desire for continued protection of water and biological resources and the recommendation to analyze cumulative impacts associated with increased development on and off of Tribal lands for future use. The Final TEIR addressed the Draft TEIR comments issued by the County and other commenters.

The County and Tribe have negotiated an Intergovernmental Agreement regarding the Back of House Expansion Project. The agreement enforces the mitigation measures in the Final TEIR in addition to a required one-time payment of \$20,440 from the Tribe to the County in in-lieu development fees.

#### **Recommendation**

Staff recommend that your Board authorize the Chair to execute the First Amendment to the 2012 Intergovernmental Mitigation Agreement with the Federated Indians of Graton Rancheria and the Intergovernmental Mitigation Agreement Regarding the Federated Indians of Graton Rancheria Back of House Expansion Project.

#### **Prior Board Actions:**

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

5/23/17 - Graton Rancheria Hotel Expansion Project Comment Letter

#### **FISCAL SUMMARY**

| <b>Expenditures</b>                | <b>FY 19-20<br/>Adopted</b> | <b>FY20-21<br/>Projected</b> | <b>FY 21-22<br/>Projected</b> |
|------------------------------------|-----------------------------|------------------------------|-------------------------------|
| Budgeted Expenses                  |                             |                              |                               |
| Additional Appropriation Requested |                             |                              |                               |

|                           |  |  |  |
|---------------------------|--|--|--|
| <b>Total Expenditures</b> |  |  |  |
| <b>Funding Sources</b>    |  |  |  |
| General Fund/WA GF        |  |  |  |
| State/Federal             |  |  |  |
| Fees/Other                |  |  |  |
| Use of Fund Balance       |  |  |  |
| Contingencies             |  |  |  |
| <b>Total Sources</b>      |  |  |  |

**Narrative Explanation of Fiscal Impacts:**

There are no additional costs associated with this item. Costs of negotiating the amendment were included in the FY 2019-2020 adopted budget. The amendment and BOH IMA include provisions for mitigation payments from the Tribe to the County. These payments will provide one-time fund balance that will be available to program as part of the FY 2020-2021 budget process.

| <b>Staffing Impacts:</b>                       |  |                           |                           |
|--|--|---------------------------|---------------------------|
| <b>Position Title (Payroll Classification)</b> | <b>Monthly Salary Range (A-I Step)</b> | <b>Additions (Number)</b> | <b>Deletions (Number)</b> |
|  |  |                           |                           |
|  |  |                           |                           |
|  |  |                           |                           |

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

None

**Attachments:**

Attachment A: First Amendment to the 2012 Intergovernmental Mitigation Agreement between the County of Sonoma and the Federated Indians of Graton Rancheria

Attachment B: Intergovernmental Agreement Regarding Federated Indians of Graton Rancheria Back of House Expansion Project

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

Intergovernmental Mitigation Agreement with Federated Indians of Graton Rancheria