



Legislation Details (With Text)

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Type: Regular Calendar Item **Status:** Agenda Ready
File created: 7/10/2020 **In control:** County Administrator
On agenda: 9/1/2020 **Final action:**
Title: Update on the Lytton Rancheria Memorandum of Agreement
Sponsors: County Administrator
Indexes:
Attachments: 1. Summary Report, 2. Attachment 1 - remediated pdf

Date	Ver.	Action By	Action	Result
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To: Board of Supervisors
Department or Agency Name(s): County Administrator's Office
Staff Name and Phone Number: Sheryl Bratton 565-2431
Vote Requirement: 4/5th
Supervisorial District(s): All

Title:
Update on the Lytton Rancheria Memorandum of Agreement

Recommended Action:

- A) Receive Update on Memorandum of Agreement with the Lytton Rancheria
- B) Adopt a budget resolution appropriating \$1,850,000 from the Lytton Mitigation Fund balance (4/5th Vote Required)

Executive Summary:

This item provides an update on the Memorandum of Agreement (MOA) between the Lytton Rancheria of California (Tribe) and the County of Sonoma. On March 10, 2015, during a public meeting of Board of Supervisors, the County entered into a MOA with the Tribe. This MOA 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 MOA through a waiver of sovereign immunity and binding arbitration to determine any disputed mitigation measures.

On August 7, 2018, the Board approved an amendment to the MOA, including the following terms:

1. Upon the enactment of the Lytton Rancheria Homelands Act, the Tribe would be permanently prohibited from conducting gaming anywhere in Sonoma County.
2. MOA term is until 2037, while the gaming restriction would survive so long as the Tribe had trust lands

in the County.

3. County maintains ability to object to, or comment on, land being taken into trust in the future.

HR 1388, the Lytton Rancheria Homelands Act of 2019, introduced by Congressman Huffman on February 27, 2020, passed the House on March 26, 2020. The final version of the bill was pulled into Senate Bill 1790, The [National Defense Authorization Act for Fiscal Year 2020 <https://www.congress.gov/bill/116th-congress/senate-bill/1790>](https://www.congress.gov/bill/116th-congress/senate-bill/1790), which was enacted on December 20, 2019. Through this bill, 500 acres west of the Town of Windsor were taken into trust for the benefit of the Tribe. The Tribe has since broken ground on the residential housing development as agreed to in the 2015 MOA and as studied in the associated the environmental review.

The County has since received a \$6 million one-time payment in lieu of normal impact fees to address offsite impacts of the development, including impacts to Riverfront Regional Park, road impacts and impacts on native oak trees. The County has also received a one-time payment of \$100,000 for administrative cost reimbursements for County staff or consultant costs.

This item requests Board approval to make the first distributions of mitigation funds totaling \$1,850,000 from the payments received described above. The distributions in this item include \$1,100,000 toward Park improvements, \$700,000 toward an intersection improvement in the Town of Windsor, and \$50,000 allocated for oak tree mitigation. The remaining approximately \$4,350,000 of the funds will be held in the Lytton Tribal mitigation fund. Staff will return at a later date with a report and recommendations on the use of those funds.

Discussion:

Background and 2015 Memorandum of Agreement

Originally recognized by the United States with land in the area north of Healdsburg in the 1930's, the tribe now known as the Lytton Rancheria of California was dissolved in 1958 and the land was sold. In 1991, the Tribe was fully restored as a federally recognized tribe. As a part of the 1991 settlement that restored the tribe, some steps were established for the process of taking various lands into trust and the County made a commitment to assist in helping the tribe find suitable lands for tribal housing and economic development. In 2007, the Tribe applied to the federal government to have 124 acres taken into trust and began the environmental review process under the National Environmental Protection Act (NEPA) to identify any necessary mitigation for the project. Negotiations over appropriate mitigations to address off-reservation environmental impacts led to the development and execution of the Memorandum of Agreement on March 10, 2015. Without the agreement, mitigation commitments made in the NEPA environmental review documents, or elsewhere, would not be enforceable.

The 2015 MOA seeks to mitigate potential impacts that would otherwise be left entirely unaddressed by the federal fee-to-trust process. Highlights of that agreement include that the Tribe would follow environmental mitigation measures and best management practices in the construction of its residential development and maintain the rural nature of the area through design and screening. Nearly all other development on the 500 acre property would be consistent with the County General Plan and Zoning Ordinance, aside from a potential resort and winery. The Tribe also agreed to compensate the County for impacts to roads and parks, among others, and pay in lieu property tax and transient occupancy tax. The original MOA also included a commitment by the Tribe not to engage in gaming in Sonoma County during the 22 year term of the agreement. In exchange, the County agreed to support legislation to take the property into trust.

First Amendment to MOA

On August 7, 2018, during a public meeting of the Sonoma County Board of Supervisors, your Board approved the first amendment to the MOA permanently prohibiting the Tribe from conducting gaming anywhere in Sonoma County. While the MOA term is through 2037, this gaming restriction would survive so long as the Tribe holds trust lands in the County. Nothing in the amendment would limit the County's ability to object to, or comment on, land being taken into trust in the future.

The Lytton Rancheria Homelands Act

In 2015, shortly after the MOA was executed, Congressman Jared Huffman introduced H.R. 2538, the Lytton Rancheria Homelands Act of 2015, to take nearly 500 acres of land outside of Windsor into trust. In the next congressional session, Congressman Jeff Denham introduced a nearly identical bill, H.R. 597. In 2019, Congressman Jared Huffman introduced H.R. 1388, the Lytton Rancheria Homelands Act of 2019. The final version of H.R. 1388 was pulled into Senate Bill 1790, The National Defense Authorization Act for Fiscal Year 2020 which was enacted on December 20, 2019.

The law contains the following gaming restrictions:

- The 500 acres outside Windsor taken into trust under the act are eligible for gaming.
- Any other lands taken into trust for the tribe after the enactment of the act will not be eligible for gaming until after March 15, 2037, when the MOA expires.
- No lands in Sonoma County located north of Highway 12 may be taken into trust for the tribe for the purposes of gaming.

Additionally, the bill recognizes and protects the validity of the MOA, which otherwise could be subject to challenge by the Bureau of Indian Affairs (BIA), due to the restrictions it would place on tribal trust land.

Residential Housing Development

The Tribe's environmental consultant provides the County quarterly mitigation monitoring reports in order to track the development and compliance with all required mitigations. As of June 30, 2020, site grading work was still continuing, tree stump removal had been completed, erosion control was being implemented, temporary water supply facilities for dust control had been constructed, groundwater monitoring had been initiated, and the final project design work was continuing. We understand that the Tribe has reached an initial agreement with the Town of Windsor for wastewater services for the residential housing development, which was the environmentally preferred option for the housing development.

Mitigation Payments

Under the MOA, the Tribe is responsible for covering the cost of offsite impacts through mitigation payments to the County. The Lytton MOA includes a \$6 million one-time payment in lieu of normal impact fees, which generally include traffic, park, and affordable housing fees, as well as to compensate for other environmental mitigation costs such as oak tree replacement, and an additional one-time payment of \$100,000 for administrative cost reimbursements for County staff or consultant costs.

The Lytton MOA includes ongoing in-lieu property tax payments to the county in the amount of 30% of 1% of the properties' assessed market value. The property will be valued "as is" on March 19, 2020, the date the deed was recorded. The first payment will be due April 10, 2021 and due annually. An estimate of ongoing in-lieu property tax payments will be available upon completion of deed processing.

Approved Distribution

The County has adopted the following financial policy with regard to mitigation funds:

“Tribal Development Impact Mitigation Funds shall be accounted for separately, so that when budgeting, only those monies received in the current year shall be relied upon for financing costs in the coming budget. The Board of Supervisors shall make a determination, as new tribal developments occur, on the best uses of these funds to mitigate impacts and maintain the high quality of life in surrounding or affected communities.”

This item requests Board approval to make the first distributions of mitigation funds totaling \$1,850,000 from the \$6,100,000 received to date. Distributions include \$1,100,000 toward park improvements, \$700,000 toward an intersection improvement in the Town of Windsor, and \$50,000 allocated for an oak tree mitigation program.

Impacts to Riverfront Park and other County parks

The mitigation payments are intended to address impacts to Riverfront Park and other county parks. The County’s Riverfront Regional Park is bordered by the Russian River on the west side and Eastside Road on east side, just west of Windsor. Riverfront Regional Park is located 1 mile west of the 500 acre tribal property. Since the park opened, Riverfront Regional Park has become a popular destination for locals and visitors for hiking, bicycling, horseback riding, fishing, boating, and picnicking. More importantly, the park provides public access to the Russian River and two lakes, Lake Benoist and Lake Wilson. The approved Riverfront Regional Park Master Plan recommended completing the park improvements in multiple phases as funding becomes available.

Park improvements for Phases 1 and 2 have been completed and Regional Parks staff is working on completing park improvements for Phase 3. Phase 3 improvements include an entry kiosk, additional parking, boat launch and portages, picnic facilities, accessibility features, and enhancing the ecological health of the park. The project incorporate any required mitigation to seasonal wetlands, Red-legged Frogs and potentially other species.

The Hansen Project is a large restoration project located north of Riverfront Regional Park, and west of Lytton Trust land. Regional Parks is in negotiations to be the fee title owner following the successful implementation of an extensive multi-year restoration and access plan that is currently in development. The proposed mitigation funding will help support the pre-acquisition and planning tasks for the public access component of the restoration plan. The Hansen Project could support multi-use trails, river access, and other amenities. This item seeks your Board’s approval of a \$1,000,000 contribution to the Riverfront Park Phase 3 improvements in addition to a \$100,000 contribution to the Hansen Project.

Town of Windsor Intersection Improvements

Under the MOA, the County is responsible for direct and cumulative impacts to County roads. In an effort to reduce the impact on local roads, this item would authorize the County to disperse a portion of the Lytton Mitigation Funds to contribute to road improvements near the Lytton reservation. Use of the Mitigation Funds for this purpose is guided by section 7.2 of the MOA. The County would contribute \$700,000 to the addition of a roundabout on Windsor

Road and Windsor River Road to help with traffic flow leading to the development.

The roundabout configuration would provide for acceptable levels of traffic flow during peak hours and

provides better operations and efficiency within the intersection. The roundabout would provide improved operations benefitting local businesses, the transit center, railroad track configuration, and nearby residences. A roundabout provides significant savings by reducing collisions, traffic delay impacts, and reduces fuel consumption and greenhouse gas emissions.

Oak Tree Mitigation Program

The County is also responsible for the mitigation of Native oak trees permanently removed as a result of project construction. Staff recommend securing \$50,000 to devote to an Oak Tree Mitigation Program to manage the re-planting of replacement trees as detailed in the MOA:

- Replacement oak trees will be planted on Tribally-owned land and/or other parcels in the vicinity of the project site.
- Oak trees may be established by planting in replacement areas trees salvaged from construction impact zones, 15 gallon-sized trees, 24-inch boxes, 36-inch boxes, saplings, propagated seedlings, acorns or any combination of these sizes or stages.
- To ensure the success of planted oak trees, the trees shall be monitored annually by a qualified biologist for a period of five years, with a survival target goal of 60 percent by the third year. If it is determined after the third year of monitoring that the 60 percent survival rate is not being met, additional trees shall be planted to meet an 80 percent survival goal near the end of five years.

This amount will also cover the staff time to secure an appropriate contractor through the Request for Proposal process.

The remaining approximately \$4,250,000 of the funds will be held in the Lytton Tribal mitigation fund. Staff will return at a later date with a report and recommendations on the use of those funds.

Prior Board Actions:

- August 7, 2018 Amendment to Lytton Rancheria MOA
- March 10, 2015 Lytton Intergovernmental Agreement

FISCAL SUMMARY

Expenditures	FY 20-21 Adopted	21-22 Projected	FY 22-23 Projected
Budgeted Expenses			
Additional Appropriation Requested	\$1,850,000		
Total Expenditures	\$1,850,000		
Funding Sources			
General Fund/WA GF			
State/Federal			
Fees/Other			
Use of Fund Balance	\$1,850,000		
Contingencies			
Total Sources	\$1,850,000		

Narrative Explanation of Fiscal Impacts:

There are sufficient appropriations available in the Lytton Tribal Mitigation Fund to make these distributions.

Staffing Impacts: none			
Position Title (Payroll Classification)	Monthly Salary Range (A-I Step)	Additions (Number)	Deletions (Number)

Narrative Explanation of Staffing Impacts (If Required):

None

Attachments:

Budget Resolution

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

None