



Legislation Details (With Text)

File #: 2022-0809
Type: Consent Calendar Item **Status:** Withdrawn
File created: 7/10/2022 **In control:** Board of Supervisors
On agenda: 8/9/2022 **Final action:** 8/9/2022
Title: Dry Creek Rancheria, Band of Pomo Indians Memorandum of Agreement
Sponsors: County Administrator
Indexes:
Attachments: 1. Summary Report

Date	Ver.	Action By	Action	Result
8/9/2022	1	Board of Supervisors	Withdrawn	

To: Board of Supervisors

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

Staff Name and Phone Number: M Christina Rivera (707) 565-2431

Vote Requirement: Majority

Supervisorial District(s): Fourth

Title:

Dry Creek Rancheria, Band of Pomo Indians Memorandum of Agreement

Recommended Action:

- A) Approve principal terms recommended for inclusion in an Amended and Restated Memorandum of Agreement (MOA) with the Dry Creek Rancheria, Band of Pomo Indians, which will supersede all prior MOA versions regarding the Tribe's River Rock Casino and any upcoming Resort projects and operations on the Tribe's Rancheria, Dugan properties near Geyserville, and Petaluma trust lands.
 - B) Delegate authority to the Board of Supervisors Chair to execute the final MOA.
- (Fourth District)

Executive Summary:

Staff request the Board's review and approval of the main MOA terms recommended to be included in the new, amended, and restated inter-governmental agreement with the Dry Creek Rancheria, Band of Pomo Indians (Tribe). The desire for a new MOA superseding all terms currently in effect is the result of: (a) the Tribe's request to do so because they don't believe the current agreement accurately reflects the current relationship between the Tribe and the County; (b) the Tribe's intent to redesign their future Tribal economic development project plan in a manner that benefits its members, and the community as a whole; and c) to comply with item 12 in the first Amendment to the MOA, stating "the County and Tribe will seek to negotiate an Amended and Restated MOA, to incorporate past, present and future modifications to the MOA, into a unified document, to the parties mutual satisfaction for clarity and ease of administration."

Supervisorial District 4 staff facilitated outreach with the Alexander Valley Association (AVA) which allowed AVA members to comment on any concerns or issues they had regarding the existing MOA with the Tribe.

Should the Board agree with the key proposed MOA changes included in this report, County Counsel staff will finalize a new amended and restated MOA 2022, and the Board of Supervisors' Chair will execute on behalf of the County.

Discussion:

The federal Indian Gaming Regulatory Act (IGRA) enacted in 1988, allows traditional Indian gaming. Today, more than 240 tribes in 28 states are involved in some kind of gaming. A principal goal of Federal Indian policy is to promote tribal economic development, and tribal self-sufficiency. Of importance, federally recognized Indian tribes can develop lands held in trust by the federal government without regard to local land use plans, such as the County General Plan.

Sonoma County has five (5) federally recognized tribes that have agreed to collaborate with this Board to ensure off-reservation impacts caused by gaming are considered and mitigated, as well as to maintain mutually beneficial government-to-government relationships. Recognizing the current limitations, this Board has taken a leadership role by working to influence regional, state, and national policy, and by negotiating intergovernmental agreements with tribes in Sonoma County to mitigate impacts, limit gaming, address community impacts, and assess whether Tribal operations result in increased county services.

The original County and Dry Creek Rancheria-Band of Pomo Indians 2008 MOA accomplished several terms and conditions intended to resolve litigation and other disputes that arose when the Tribe initiated construction and operation of the River Rock Casino on the Tribe's federally recognized lands near Geyserville, CA. The initial 2008 MOA also established a process to identify and mitigate off-reservation environmental impacts derived from Tribal casino-related projects and created a framework for building and maintaining a mutually beneficial government-to-government relationship. Presently there are no longer any legal disputes between the Tribe and the County, rather both parties have established a respectful and mutually beneficial cooperative relationship.

Since 2008 the following revisions have occurred within that agreement:

- **May 28, 2010, May 23, 2011 and July 12, 2012 Letter Agreements:**

Due to a major economic downturn ("Great Recession"), which began shortly after completing the 2008 MOA and continued into 2010 and beyond, the Tribe lost the ability to finance construction of the planned Resort project. The Great Recession also substantially negatively impacted the Casino's economic performance. The Letter Agreements modified the MOA's previously agreed mitigation payments to the County and confirmed the completion of certain obligations by the Tribe, including the establishment of a conservation easement on the Tribe's Petaluma property.

- **2015 First Amendment to MOA**

In November 2013, the Federated Indians of Graton Rancheria opened Graton Casino and Resort in Rohnert Park, 33 miles from River Rock Casino, and in a location that "cut off" River Rock Casino from much of its Bay Area customer base, which substantially reduced that Casino's revenue. That unrealized revenue was never recovered. Also, the planned Resort project was never completed. Therefore, the Tribe initiated re-negotiation of the 2008 MOA to further adjust the mitigation payments due as a result of the Tribe defaulting in its financial obligations. In September 2015 the County agreed to assist the Tribe and its community by amending several provisions of the 2008 MOA including extending the term to December 31, 2030. The Tribe agreed to abstain from applying for federal trust status for the Petaluma property until

2025 and also agreed to extend the term of the MOA to 2030. The 2015 Amendment also established a commitment to “develop and execute an Amended and Restated MOA.”

- **2016 Intergovernmental Mitigation Agreement**

Pursuant to the terms of the amended MOA, the Tribe and County established a mutual process for taking the Alexander Valley Campground located at 2411 Alexander Valley Road, Healdsburg into federal trust, which recognized that in 2011 the Tribe was granted Treatment in the Same Manner as a State (“TAS”) status for purposes of the federal Clean Water Act qualifying the Tribe to conduct its own inspections and regulate the non-standard individual sewage disposal system on its reservation land.

- **2017 Second Amendment to the MOA**

In this Amendment the Tribe agreed to specific provisions regarding resolution of the Tribe’s petition for a conditional license from the CA Department of Alcoholic Beverage Control (ABC) and established certain new requirements for live outdoor entertainment events at the Casino. In 2017, the Tribe was issued a new liquor license by the ABC which includes mutually agreeable restrictions and conditions on the usage and operations surrounding alcohol sales, including noise and security, but which both parties agree would not be enforceable by the ABC.

- **2017 Tribal-State Compact**

In 2017 the Tribe entered into a new Tribal-State Compact with the State of California (State Compact). The State Compact recognizes the 2008 MOA and that it establishes the process by which the Tribe identifies and mitigates off-reservation impacts in the County. The term of the State Compact is through 2043.

- **2021 Third Amendment to the MOA**

In August 2020, due to COVID-19 pandemic impacts resulting in extended Casino operations closure, the County agreed to defer the Tribe’s annual mitigation payments to the County for the years 2020 and 2021 and extend the term of the MOA for two years.

2022 NEW AMENDED & RESTATED MOA SIGNIFICANT RECOMMENDED CHANGES

The Tribe and the County have participated in joint meetings over the course of many years to address potential off-Reservation impacts and possible additional mitigation measures that might be taken with respect to proposed economic development projects on the Reservation and other lands owned in fee by the Tribe. Following are the most significant changed sections of the 2008 MOA, as amended, which staff recommends the Board approve for inclusion in this new 2022 amended and restated MOA:

- a. **Reduced-Size Casino & Resort Project**

The Tribe’s updated plan for a permanent, not a sprung tent structure, casino, and a resort are now identified and planned as “Reduced-Size Casino & Resort Project”, which is described as an approximately 50,000 square foot casino with a maximum of 1,500 slot machines and 25 table games, a 200-room hotel with spa, salon and fitness room, three restaurants, food court, a multi-function event center, and a wedding chapel. The Reduced-Size Casino & Resort project is smaller than the original Resort project set forth in the 2008 MOA, which included, through phased building, a total of a 600-room hotel and related restaurant, retail, and hospitality facilities.

- b. **Supplemental Environmental Study**

Using the Existing Casino as the baseline for analysis and relying upon the data generated by the existing 2008 Tribal Environmental Impact Report, the Tribe will complete a Supplemental Environmental Study to identify all off-reservation impacts derived from the construction of the Reduced-Size Casino & Resort Project. Also, the Tribe agrees to mitigate off-reservation impacts resulting from the Supplemental Environmental Study.

- c. **Petaluma Property**

In 2006 the Tribe purchased approximately 277 acres located within an unincorporated portion of the County along U.S. Highway 101 near the City of Petaluma. In April 2006, the Tribe filed a fee-to-trust application that sought to have the Petaluma Property placed into federal trust for the Tribe's benefit. The trust application was filed under federal provisions for acquiring land into trust for Tribal governmental gaming purposes. In the 2008 MOA, and in the proposed new amended and restated 2022 MOA, the Tribe agreed to forego Gaming on the Petaluma Property for the term of this Agreement with one caveat, which is that if a Gaming Facility is approved for the Koi Nation in Sonoma County then the Tribe will confer with the County regarding any intention or plan for gaming on the Petaluma property before taking any action to seek trust status for the land for gaming purposes.

d. County Law Enforcement Services

The County agrees to provide a continued adequate level of law enforcement service to the Reservation, as determined by the Sheriff in consultation with the Tribe, including timely response to law enforcement needs. However, the Tribe shall not be liable for the direct payment of any salaries, wages, or other compensation to any County personnel performing services for the County except for, at the Tribe's request, the reimbursement of special event services at the Casino and/or Reduced-Size Casino & Resort Project provided under separate contract or fee schedule. The new proposed MOSA retains language identifying that the Sheriff's Office has the final authority to determine how any procedural conflicts pertaining to matters strictly within its criminal jurisdiction under Public Law 280 shall be resolved. Further provisions include:

- Should the Sheriff incur extraordinary expenses in connection with a response to a significant and unplanned incident relating to Tribe's operations on the Rancheria that requires efforts beyond the range of typical emergency law enforcement response, the Tribe and the Sheriff shall negotiate in good faith for reimbursement of reasonable and necessary extraordinary expenses incurred by the County.

e. Fire and Emergency Services

In 2016, the Tribe established the Dry Creek Rancheria Fire Department on the Rancheria. The Tribe, Dry Creek Fire, and the County shall cooperate on a government-to-government basis to promote public safety. County does not have fire code enforcement authority on the Rancheria or BIA 93 under Public Law 280 or other applicable law. Tribe agrees that prior to the occupancy of any building of the Reduced-Size Casino Resort Project, the Tribe shall provide to the County a certificate issued by a qualified Tribal build official attesting that the subject improvements comply with all applicable codes. The Parties recognize that there are automatic aid and mutual aid agreements for fire and emergency services in Sonoma County, under which the County provides hazardous material response to the Reservation, and is responsible for central dispatch services, as well as other command/support and disaster preparedness functions. The increased need for fire protection and emergency services required for the Casino Resort Project may have an impact on those agreements and services and may require additional training and/or services. In addition, DCR Fire provides fire protection and emergency services to Sonoma County residents and guests and shall be compensated for such services under the mutual aid agreement.

f. Live Outdoor Entertainment Events and Noise

Tribe agrees to certain specific limitations on number and size of live outdoor events at the Casino and certain controls regarding mitigation of noise generated during those events, as well as notification to the Sheriff of outdoor events.

g. Mitigation Measures and Monitoring Program

The MOA establishes certain mitigation measures the Tribe will take upon undertaking structural changes and construction of the Reduced-Size Casino & Resort Project, as provided in the Supplemental Environmental Study. There are no mitigation measures identified for any other Tribe project other than the Reduced -Site Casino & Resort Project. Any dispute over any of the mitigation measures is subject to the dispute resolution provisions in the MOA.

h. Annual Payments to the County

For 2022, and through the terms of the agreement, up to and including 2043, unless otherwise changed or extended by further agreement of the parties, the Tribe shall make an Annual Payment of \$1,000,000 to the County to offset cost of County services resulting from existing and future Tribe operations on the Rancheria lands. The Annual Payment shall be due and payable on December 15th of each year. Five (5) years after the Reduced-Size Casino & Resort project opens, the Baseline Amount shall be adjusted to equal the prior year's Baseline Amount plus a 2% increase. *Note, that annual payment will be capitated at \$1.5 million.*

i. Re-openers

Additional impacts or events not foreseen in the proposed new MOA may occur. Including that the Tribe's projected income may

not be realized due to the inability to open the Reduced-Size Casino Resort Project as planned. Therefore, the following primary events are proposed as reopener triggers:

- Amendments to the Tribe's 2018 State Gaming Compact.
- Three consecutive years of Tribe revenue decline of at least 20%. A request for re-opener negotiations is to be supported audited financial statements prepared by an independent accounting firm provided by the Tribe.
- Significant portion of the Tribe's operations cease for a continuous period of at least seven (7) consecutive days, due to forces entirely beyond the Tribe's control.
- New or revised impacts from the Reduced-Size Casino Resort Project as identified in the yet to be completed Supplemental Environmental Study.
- Significant increased demand of County services over and above programmed services included in the County's Adopted FY 2022-2023 resulting from Casino Resort Project development and or operations.

Strategic Plan:

N/A

Prior Board Actions:

- April 13, 2021 Approved Third Amendment to the 2008 Memorandum of Agreement with the Dry Creek Rancheria Band of Pomo Indians
- October 24, 2017 Approved Second Amendment to Memorandum of Agreement with the Dry Creek Rancheria Band of Pomo Indians to Address Events, Noise Mitigation, and Notice to Sheriff
- September 27, 2016 Approved Intergovernmental Mitigation Agreement Regarding the Alexander Valley Campground Between Dry Creek Rancheria Band of Pomo Indians and County of Sonoma
- September 22, 2015 Approved First Amendment to Dry Creek Rancheria Memorandum of Agreement
- May 24, 2011 Authorized the County Administrator and County Counsel to execute a letter confirming mutual understanding and agreement to amend implementation of the March 18, 2008 Memorandum of Agreement with the Dry Creek Tribe
- March 18, 2008 Adopted Resolution Approving Memorandum of Agreement with the Dry Creek Rancheria Band of Pomo Indians
- August 14, 2007 Authorized Comments on Dry Creek Rancheria Economic Development Master Plan Environmental Study
- June 21, 2005 Approved comments to the Notice of Land Acquisition Application and the Fee to Trust Project Draft Environmental Assessment

FISCAL SUMMARY

Expenditures	FY 22-23 Adopted	FY 23-24 Projected	FY 24-25 Projected
Budgeted Expenses	\$1,800,000	\$1,800,000	\$1,800,000
Additional Appropriation Requested			
Total Expenditures	\$1,800,000	\$1,800,000	\$1,800,000
Funding Sources			
General Fund/WA GF	\$1,050,000	\$800,000	\$780,000
State/Federal			
Fees/Other	\$750,000	\$1,000,000	\$1,020,000
Use of Fund Balance			
Contingencies			
Total Sources	\$1,800,000	\$1,800,000	\$1,800,000

Narrative Explanation of Fiscal Impacts:

FY 2022-2023 Adopted Budget includes approximately \$1.8 million in County services supporting the Tribe's operations. Based on current MOA terms, the costs are offset by a \$750,000 annual payment to the County.

The proposed new amended and restated MOA will update the annual baseline amount to \$1 million.

Staffing Impacts:			
Position Title (Payroll Classification)	Monthly Salary Range (A-I Step)	Additions (Number)	Deletions (Number)

Narrative Explanation of Staffing Impacts (If Required):

N/A

Attachments:

None

Related Items “On File” with the Clerk of the Board:

May 28, 2010, May 23, 2011 and July 12, 2012 Letters Agreements

2015 First Amendment to MOA

2016 Intergovernmental Mitigation Agreement

2017 Second Amendment to the MOA

2021 Third Amendment to the MOA