



Legislation Text

File #: 2022-0940, **Version:** 1

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): Second, Fourth

Title:

3:30 P.M. Dry Creek Rancheria, Band of Pomo Indians Memorandum of Agreement

Recommended Action:

- A) Approve Amended and Restated Memorandum of Agreement (MOA) between the Dry Creek Rancheria, Band of Pomo Indians and the County of Sonoma, which will supersede all prior MOA versions and amendments thereto. (Second and Fourth District)
- B) Delegate authority to the Board of Supervisors Chair to execute the amended MOA.
(Second and Fourth District)

Executive Summary:

Staff request the Board's review and approval of the staff recommended draft Amended and Restated MOA, (hereinafter "Amended MOA"), which was endorsed by the Tribe's Board of Directors in December 2022. The intent is to (a) establish an updated document that accurately reflects the current relationship between the Tribe and the County; (b) recognize the Tribe's intent to redesign its future Tribal economic development project plan in a manner that benefits its members and the community as a whole by pursuing a reduced scope casino and resort development; and c) to comply with item 12 in the September 2015 Amendment to the current 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."

On 8/9/22 staff presented, the principal new Amended MOA deal points at that time for Board approval. At the request of District 4 Supervisor 2022 Chairperson the item was removed from the agenda for further consideration. In addition, the Alexander Valley Association (AVA) submitted a public comment letter dated January 6, 2023 (Attachment 2) requesting postponement of the item. As a result, additional significant outreach and discussions were had with the AVA board members.

The term of the proposed Amended MOA when the Tribe's State Compact expires, including any amendment, revision, or modifications thereto but in any event, no earlier than August 1, 2043. If the Board approves staff's proposed Amended MOA the Board of Supervisors' Chair will execute on behalf of the County.

Discussion:

BACKGROUND

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 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, to various degrees, have collaborated 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 assessed the Tribal operations which resulted in increased County services.

The original County and Dry Creek Tribe 2008 MOA accomplished several purposes, including setting forth terms and conditions intended to resolve active litigation and other disputes that arose when the Tribe initiated construction and operation of the River Rock Casino on the Tribe's Rancheria 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 active legal disputes between the Tribe and the County, rather both parties have established a respectful and mutually beneficial cooperative relationship. Since 2008 the multiple revisions have occurred within that agreement - a summary is included in Attachment 2 of this item.

2023 PROPOSED AMENDED & RESTATED MOA SIGNIFICANT TERMS

The Tribe and the County have participated in joint meetings over the course of many months to comply with the current MOA goal to incorporate past, present and future modifications to the MOA, into a unified document, and to have a current and updated alignment with the Tribe's planned economic development projects on the Reservation and other lands owned in fee by the Tribe. Following are the principal changes included in the proposed amended and restated MOA:

a. Reduced-Size Casino & Resort Project

As identified in the 2008 MOA, the Tribe's original plan for construction of a new resort and casino facilities on its Rancheria outlined a two-phase build-out of a casino resort project, as described in a Tribal Environmental Impact Report of 2008. This plan included an 88,000 square foot casino, a 600-room hotel and related restaurant, retail, and hospitality facilities, as well as conference and entertainment venues. Faced with an economic downturn and the opening of the Graton Casino nearby, the Tribe was not able to secure financing for this original Resort project and it was never built. Therefore, the Tribe's updated plan, which includes a permanent structure casino operation, and resort is now identified as the "Reduced-Size Casino & Resort Project". It is described as an approximately 60,000 square foot casino with a maximum of 1,500 Class III slot machines and 25 table games, a hotel with less than 300 rooms, with spa, salon and fitness room, restaurants, food court, a multi-function event center, and a wedding chapel.

b. Supplemental Environmental Study (SES)

Using the existing River Rock Casino as the baseline for analysis and relying upon the data generated by the existing 2008 Tribal Environmental Impact Report, if the Tribe intends to construct the Reduced-size Project the Tribe will complete a SES to identify potential off-reservation impacts derived from the construction of the Reduced-Size Casino & Resort Project. The Tribe may only certify the Final SES if it finds that the SES has been completed in compliance with the Proposed Amended MOA and that it reflects the Tribe's independent judgment and analysis. The Tribe can then either approve the project or approve the project subject to any changes prescribed to mitigate certain significant adverse impacts to the off-Reservation environment, or denial of the project or redesign. The SES provides for the analysis and process to address future development **off-reservation** community concerns around wastewater, water availability, human health, air quality, size scope and visual neighborhood impacts, traffic concerns, public safety, fire danger, and impacts to the agricultural region's environment.

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 2015 Amendment to 2008 MOA, the Tribe agreed to suspend the Gaming purposes of the application i.e. forego Gaming on the Petaluma Property, until March 2025.

The proposed amended and restated 2023 MOA extends no-gaming on the Tribe's Petaluma property through March 2035, unless the Dept. of the Interior issues a Notice of Decision approving the Koi Nation Tribe's application to take land into trust for gaming purposes in Sonoma County. If that occurs, the Dry Creek Tribe shall confer with the County regarding its intention or plan for gaming on the Petaluma Property before taking any action to seek trust status for gaming purposes prior to 2035. The Tribe may then seek to take the Petaluma Property into trust for gaming purposes, although nothing in the Amended MOU binds the County to any action that may be deemed support of such an acquisition. Notwithstanding, the Tribe agrees to limit tribal gaming to a single location in Sonoma County at any time. It also agrees to extend its current commitment not to seek to obtain federal trust status for gaming purposes for any land in Sonoma County, other than the Petaluma Property and its Bellacana property near Geyserville.

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 proposed amended MOA 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.

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. 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 MOA also requires the Tribe to keep the tribe's Cal Fire certification current at all times in their built Fire Station, or if it lapses to notify the County immediately and negotiate an updated Fire Protocol that addresses the needs of both parties.

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. The proposed amended MOA preserves the 2017 outdoor events and noise limitations requirement.

g. Alcohol Services

The proposed MOA preserves the 2017 negotiated conditions which are codified in the Tribe's State Department of Alcoholic Beverage Control (ABC) license. Current ABC license is included as Exhibit B to the proposed 2023 MOA.

h. Mitigation Measures for Reduced-Size Casino and Resort Project

The proposed amended MOA identifies 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. Those address fire suppression, aesthetics, night lighting, air quality, biological resources, water quality, drainage and stormwater, wastewater, solid waste, traffic and transportation. The specific mitigation measures are attached to the proposed MOA as Exhibit A.

i. Wastewater Treatment Plant Operation

Tribe will maintain its permit under the National Pollutant Discharge Elimination System (NPDES) current and in good standing.

Tribe has gained Treatment as a State Status (TAS) and has assumed jurisdiction over the waters within the Rancheria and will comply with the terms of the NPDES with the Environmental Protection Agency who has enforcement authority.

j. Tribe agrees to consult with the County with regard to any fee to trust application for any of its fee properties in the Alexander Valley, and such uses will be consistent with surrounding uses in the Alexander Valley.

k. Annual Payments to the County

For 2023, 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 continue to make an Annual baseline \$750,000 payment to the County to offset cost of County services resulting from existing and future Tribe operations on the Rancheria lands. The Annual Payment shall remain unchanged until four (4) years after the Reduced-Size Casino & Resort is constructed and operational, at which point the Baseline Amount shall be adjusted to equal the prior year's Baseline Amount plus a 2% increase, not to exceed \$1.5 million for any year.

l. Re-openers

Additional impacts or events not foreseen in the proposed amended 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.
- Closure of the Tribe's Dry Creek Fire Department.
- 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 significant impacts from the Reduced-Size Casino Resort Project as identified in the yet to be completed Supplemental Environmental Study.
- The Tribe decides to close the Dry Creek Fire Department or allow Cal Fire Certification to lapse.
- 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.
- The Tribe is unable to construct the Reduced-Size Casino Resort Project

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 (MOA) 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
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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	\$1,050,000	\$1,050,000
State/Federal			
Fees/Other	\$750,000	\$750,000	\$750,000
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 increased as a result of 2008 planned casino operations and resort activities. Based on current MOA terms, these costs are offset by a baseline \$750,000 annual payment to the County. The balance is covered as part of regular General Fund that finances Sheriff Office operations. The proposed amended MOA will adjust the annual baseline amount, beginning 4 years after the Reduced-Sized Casino and Resort is constructed and operational, to equal the immediately prior year’s Baseline Amount plus a 2% increase, not to exceed \$1.5 million for any year.

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

Narrative Explanation of Staffing Impacts (If Required):

N/A

Attachments:

- Attachment 1: 2023 New and Restated Proposed MOA Draft, Exhibit A Draft Mitigation Measures, Exhibit B Petition for Conditional ABC License, Exhibit C ABC Form 257
- Attachment 2: Memorandum of Agreement Background
- Attachment 3: Public Comment Letters

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

- 2008 Memorandum of Agreement Dry Creek Rancheria Band of Pomo Indians and County of Sonoma 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
- Additional Public Comment Letters