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November 7, 2012

Board of Supervisors
County of El Dorado
330 Fair Lane
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Honorable Board:

SUBJECT:

Proposed Amendment to the Memorandum of Understanding between the County of El Dorado and the Shingle Springs Band of Miwok Indians

RECOMMENDATION:

Supervisors Sweeney and Briggs recommend that the County enter into the proposed Amendment to the existing MOU, which has already been approved and executed by the Tribe.

REASON FOR RECOMMENDATION:

In 2006 the County and the Tribe entered into a Memorandum of Agreement (MOU) in settlement of the then-pending litigation which challenged the Tribe's proposed Red Hawk Casino on the Rancheria situated along Highway 50. The County had filed a lawsuit in Superior Court challenging the State's environmental analysis regarding the construction of a new interchange on Highway 50 which was necessary to build and operate the proposed casino. *El Dorado County v. California Department of Transportation*, Sacramento County Superior Court Case No. 03CS000003. The Rancheria was commercially landlocked so without the new interchange the casino could not be built or operated. The County was concerned about the many projected environmental impacts of the casino on the County, including traffic. The County had also filed a lawsuit in federal court challenging the lawfulness of the recognition of the Tribe by the Bureau of Indian Affairs. *El Dorado County v. Gale Norton*, E.D. Cal. CIV S-02-1818 GEB DAD. Only properly recognized tribes can operate casinos on Indian lands, so if that case was successful, the casino project would have to be abandoned. At the time of the settlement, that tribal recognition case was on appeal to the Ninth Circuit Court of Appeals, *El Dorado County v. Norton*, Ninth Circuit Case No. 05-15224. Once again, the County's concern was the environmental and other impacts of the proposed casino on the County and its citizens.

In order to settle the County's litigation which was preventing the construction of the interchange and the casino, the Tribe and the County agreed to a settlement by which the Tribe would pay money to the County which the County could use to mitigate the various expected impacts of the proposed casino, and in return the County would cease its litigation challenging the interchange and casino projects which would allow the projects to go ahead. To effectuate the settlement, the Tribe and the County entered into the "Memorandum of Understanding and Intergovernmental Agreement Between the County of El Dorado and Shingle Springs Band of Miwok Indians" in September 2006. In consideration for the various monetary payments by the Tribe to the County specified in the MOU, the County agreed to cease its efforts to oppose the Tribe's casino and interchange projects, and to refrain from assisting others in such an effort. The County has fully performed all of its obligations under the MOU. Among other things, the County dismissed its federal tribal recognition lawsuit, and in the Superior court CEQA case, the County assisted the Tribe in winning that case against the remaining private petitioner by formally taking the position that that the MOU payments fully mitigated all impacts. As a result of the County's actions, the Tribe was able to construct the interchange and casino, which have operated successfully ever since.

Paragraph A of the MOU notes the existence of programmed 5.3 mile long High Occupancy Vehicle (HOV) project for mainline Highway 50, that would add carpool lanes in both directions from the Sacramento County line up to the vicinity of the casino. In paragraph A, the Tribe agrees to pay the County \$5.2 million per year for 20 years, an amount that was calculated to be sufficient to fund the expected cost of construction if a bond was obtained. After the MOU was signed, the bond market for Indian casino financed projects crashed, and there was no opportunity to put together a reasonable funding package that would produce the construction funds for the HOV project. The Tribe has made three annual payments as required by paragraph A, and some of it has been spent on engineering and other expenses related to the HOV project. It also turned out that the traffic on Highway 50 was less than originally projected, but the impact of the casino on other roads in the area of the casino was greater than projected. The federal government initiated several economic stimulation programs, including grant funding for road projects that were ready to go to construction. The County applied for and obtained funding from the federal government which has paid for the HOV project, which is currently under construction and projected to be completed this year.

The Board previously designated Supervisors Sweeney and Briggs to coordinate with the Tribe on various matters of mutual interest. During these discussions, the unexpected federal funding which the County directed to the HOV project was raised, as well as the impacts of the casino on roads other than Highway 50. The Tribe's newly built Health Clinic was also discussed. The new Health Clinic is the only medical facility in the area which serves indigent and MediCal patients, both tribal members and non-Indians, and it has seen an increased patient load recently in part because of the casino. It was proposed to amend the MOU to reflect the current reality, and subsequent negotiations have produced the proposed amendment to the MOU.

The proposed Amendment affects only paragraph A of the MOU. Under the Amendment, the Tribe will continue to pay \$5.2 million per year, but the amount will increase by 2% every year beginning in December 2017, for the duration of the agreement. These payments can be used by the County not just for the HOV project but for any "qualifying public improvements" including but not limited to road improvements and maintenance, which are located near the casino as

designated on a map made Exhibit A to the Amendment. The County agrees to pay the Tribe an annual payment of \$2.6 million per year, increasing by 2% every year beginning in December 2017, to be applied to the health programs at the Tribal Health Clinic which serves both tribal members and non-tribal persons. The Amendment specifically recites that all of the other terms and condition in the MOU remain in full force and effect.

The consideration for the Amendment is that both parties resolve any uncertainty concerning the continuation of the payments in paragraph A once the HOV lane project is completed, and both parties benefit from the County's ability to use that annual payment for "qualifying public improvements" in the vicinity of the casino, including roads that have been impacted by casino-related traffic which will allow easier access to the casino. The Tribe and its members will benefit from the public improvements funded with the money paid pursuant to paragraph A and thus the proposed Amendment will benefit all parties. The amendment furthers the parties' mutual interests in the same manner as the original MOU, and thus the amendment is supported by the same consideration as the original MOU.

FISCAL IMPACT:


The County will continue to receive the \$5.2 million annual payment from the Tribe under paragraph A, except that the amount will increase at 2% per year starting in 2017, and the payments will continue for the duration of the Tribe's compact with the State. The use of those funds will no longer be limited to the Highway 50 HOV project but can be used by the County for any "qualifying public improvement" projects located within the delineated geographic area near the casino, which will allow the County to mitigate the impacts of the casino more broadly than the original MOU. No particular projects are specified at this time. The County will spend \$2.6 million annually, increasing at 2% per year in 2017, towards the tribal health clinic, which has been impacted by the casino and which serves all citizens of El Dorado County. All of the other payments from the Tribe to the County in the 2006 MOU will remain in full force and effect and are not changed by the proposed amendment.

ACTION TO BE TAKEN FOLLOWING APPROVAL:

The Chairman will execute duplicate originals of the "Amendment of Memorandum of Understanding and Intergovernmental Agreement Between the County of El Dorado and Shingle Springs Band of Miwok Indians." One original will be given to the Tribe and the other will be filed by the Board Clerk.

Very Truly Yours,

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