



Please pull 2/4/14 BOS Consent Items #4 and #9

1 message

Lori at Shingle Springs Community Alliance

Mon, Feb 3, 2014 at 8:56

<info@shinglespringscommunityalliance.com>

AM

To: Supervisor Mikulaco <bosone@edcgov.us>, Supervisor Nutting <bostwo@edcgov.us>, Supervisor Veerkamp <bosthree@edcgov.us>, Supervisor Briggs <bosfour@edcgov.us>, Supervisor Santiago <bosfive@edcgov.us>, edc.cob@edcgov.us

Please pull Consent items #4 and #9 from the 2/4/14 BOS agenda for public discussion.

The November 7, 2012 letter from County Counsel that relates to the Tribe Funds on these items states under Fiscal Impact:

"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."

How and when was it decided that the Diamond Parkway is impacted by the casino and is a "qualifying public improvement" project? Right now we have Red Hawk Casino buses using Shingle Springs Road, Buckeye Road, and Mother Lode Drive to get to the gas card lock station, and causing an impact on those roads. I have heard from residents that they would prefer that the buses use Hwy 50 to get to the gas station, but the Ponderosa interchange is extremely congested and the buses use the other route to avoid the congestion.

Why weren't funds used in Shingle Springs, which is being directly impacted by the casino?

Lori Parlin
Shingle Springs Community Alliance

2 attachments

 **C - Letter from County Counsel.pdf**
2487K

 **G - Amendment to MOU with SS Band of Miwok Indians.pdf**
2131K

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November 7, 2012

Board of Supervisors
County of El Dorado
330 Fair Lane
Placerville, CA 95667

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,

LOUIS B. GREEN
County Counsel

By: 
Edward L. Knapp
Chief Ass't. County Counsel

AMENDMENT OF MEMORANDUM OF UNDERSTANDING AND INTERGOVERNMENTAL AGREEMENT BETWEEN THE COUNTY OF EL DORADO AND SHINGLE SPRINGS BAND OF MIWOK INDIANS

THIS AMENDMENT OF MEMORANDUM OF UNDERSTANDING AND INTERGOVERNMENTAL AGREEMENT BETWEEN THE COUNTY OF EL DORADO AND SHINGLE SPRINGS BAND OF MIWOK INDIANS (“**Amendment**”) is dated October 20 2012 for purposes of reference only, and is made between the County of El Dorado (“**County**”) and the Shingle Springs Band of Miwok Indians, a federally recognized Indian tribe (“**Tribe**”).

RECITALS:

A. The County and the Tribe are parties to that certain Memorandum of Understanding and Intergovernmental Agreement between the County of El Dorado and Shingle Springs Band of Miwok Indians dated September 28, 2006 (“**Memorandum of Understanding**”).

B. The County and the Tribe desire to amend the Memorandum of Understanding to reallocate certain amounts currently paid by the Tribe to the County to certain other mutually agreed upon uses.

THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the County and the Tribe agree as follows:

AGREEMENT:

1. Qualifying Public Improvement Projects. In lieu of making the HOV Payment required under Section A of the Memorandum of Understanding, the Tribe will hereafter make one (1) payment annually of Five Million Two Hundred Thousand Dollars (\$5,200,000) to the County for the duration of the Agreement to be used by the County for public improvements located within the designated boundaries as depicted on the attached map of El Dorado County, including, but without limitation, to road improvements and/or maintenance (“**Qualifying Public Improvements**”). Attached at Exhibit A is a map of El Dorado County defining the location of the Qualifying Public Improvements. The first payment of Five Million Two Hundred Thousand Dollars (\$5,200,000) is due on December 1, 2012, with remaining payments due on the same date for each of the following years through the duration of the Agreement. Such payment shall be increased by two percent (2%) every year, beginning on December 1, 2017.

2. Qualifying Healthcare Contributions. In consideration of the increased expenses to the Tribe’s Health Program for caring for non-Indian citizens of the County, the County shall pay the Tribe an annual contribution of Two Million Six Hundred Thousand Dollars (\$2,600,000) to be applied to the Tribe’s health programs that service both tribal and non-members and may be used for, among other things, behavioral health

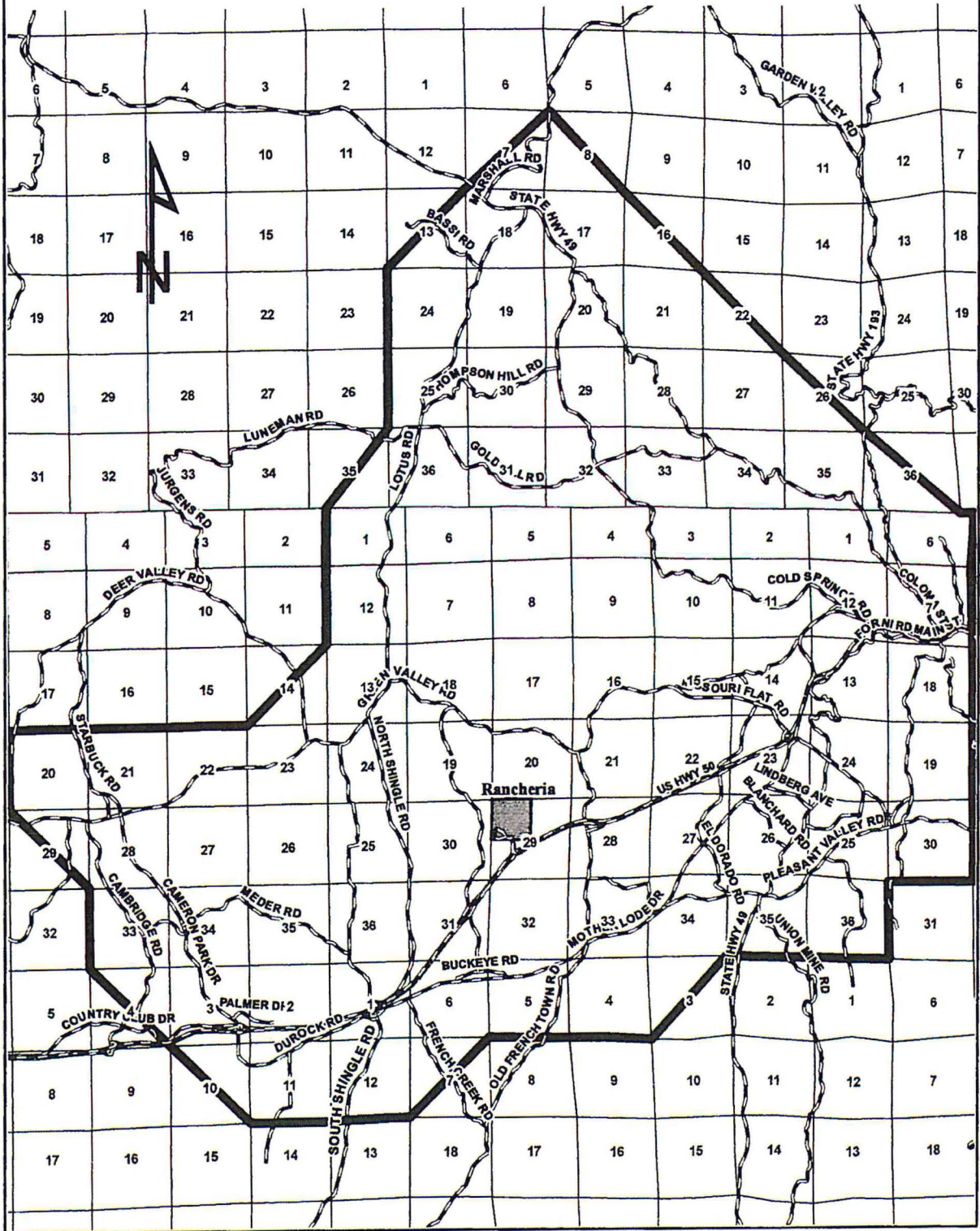
services, outreach services, dental care services, insurance costs and reimbursement of medical expenses (“**Qualifying Healthcare Contributions**”). Such contribution shall be increased by two percent (2%) every year, beginning on December 14, 2017. The County shall make its first Qualifying Healthcare Contribution to the Tribe on or before December 14, 2012, with remaining payments due on the same date each of the following years through the duration of the Agreement. In no event will the County be obligated to make such payment before the Tribe makes its Qualifying Public Improvements payment. Commencing July 1, 2013, and each July 1 thereafter, the Tribe shall submit to the County an annual written summary detailing the expenditures made with the funds from the Qualifying Healthcare Contribution.

3. Miscellaneous. Except as amended by this Amendment, all of the other terms and conditions set forth in the Memorandum of Understanding shall remain in full force and effect. This Amendment may be executed in one or more counterparts.

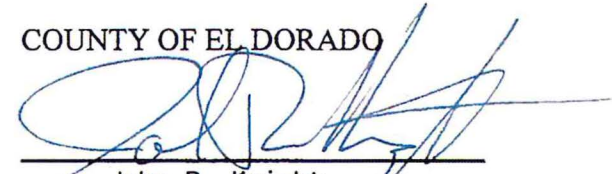
4. Limited Waiver of Sovereign Immunity. The Tribe hereby agrees to waive its sovereign immunity (and any requirement of exhaustion of tribal remedies) in connection with any dispute vis-à-vis the County that may arise under this Amendment, and consents to the jurisdiction of certain courts solely for purposes of enforcing the terms of this Amendment. To that end, the Tribe consents only to the jurisdiction of the U.S. District Court in the Eastern District of California (and all relevant courts of appeal), or alternatively, to the jurisdiction of the Superior Court of California (and all relevant courts of appeal), for judicial resolution of disputes with the County over this Amendment. The County and the Tribe agree that jurisdiction and venue for any such dispute shall be in any superior court other than El Dorado County Superior Court unless it is determined by another superior court, *sua sponte* and without motion or suggestion by the County, that the action must be heard in El Dorado County Superior Court. The County agrees to jurisdiction and venue in Sacramento County Superior Court and will not assert that jurisdiction and venue lie in El Dorado County Superior Court unless there is no other superior court that will accept jurisdiction and venue for the matter. The waiver is also limited to amounts due under the terms of this Amendment, and in no instance shall the waiver be read to extend to allow judicial enforcement of any kind against any assets of the Tribe, other than the Revenue Stream of its Gaming Project. (Revenue Stream is defined as net profits due and owing to the Tribe that are derived from the operation of the Gaming Project after all costs of operation, repayment of debt service, payments to the State under any Compact, and payments to the Tribe for any necessary governmental functions associated with the operation of the Gaming Project have been made.) The Tribe also does not agree to waive any aspect of its sovereign immunity with respect to actions by parties other than the County.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date first above written:

Exhibit A
Area of Use Map



COUNTY OF EL DORADO



John R. Knight
Chair, Board of Supervisors

ATTEST: James S. Mitrison
Clerk of the Board of Supervisors

By Cindy Johnson
(DEPUTY)

11-14-12
Date

SHINGLE SPRINGS BAND OF
MIWOK INDIANS

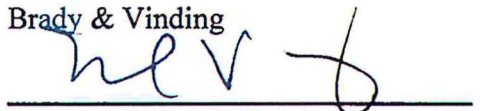


Nicholas Fonseca

10/20/12
Date

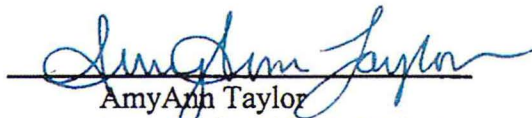
APPROVED AS TO FORM:

Brady & Vinding



Michael V. Brady
Counsel for El Dorado County

10/14/12
Date



AmyAnn Taylor
Counsel for Shingle Springs
Band of Miwok Indians

10/20/12
Date